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IN THE

Supreme Court of the United States

No. 289.

Term, 1955.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL UNION NO. 1291, JAMES T. MOOCK, Atlantic Coast District Vice-President of the International Longshoremen's Association, CLIFFORD CARTER, International Organizer for the International Longshoremen's Association, RICHARD ASKEW, President of Local Union No. 1291, and ALEXANDER TALMADOR, PAUL JOHNSON, JR., JOHN J. SMITH, JR. and MARTIN WELSH, Delegates of Local No. 1291, and Approximately One Hundred and Sixty Longshoremen Who Are Employed by Dugan & McNamara, Inc., Contracting Stevedores,

Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION, THE NATIONAL SUGAR REFINING COMPANY and DUGAN & McNAMARA, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

ABRAHAM E. FREEDMAN,
CHARLES LAZARUS,
AUGAN G. ARESS,
FREEDMAN, LAZARUS AND LEVIN,
1415 Walnut Street,
Philadelphia 2, Penna.

Counsel for Petitioners.

International, 311 Chestnut St., Phila. 6, Pa.

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INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL UNION NO. 1291, JAMES T. MOOCK, ATLANTIC COAST DISTRICT VICE-PRESIDENT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, CLIFFORD CARTER, INTERNATIONAL ORGANIZER FOR THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, RICHARD ASKEW, PRESIDENT OF LOCAL UNION NO. 1291, AND ALEXANDER TALMADGE, PAUL JOHNSON, JR., JOHN J. SMITH, JR. AND MARTIN WELSH, DELEGATES OF LOCAL NO. 1291, AND APPROXIMATELY ONE HUNDRED AND SIXTY LONGSHOREMEN WHO ARE EMPLOYED BY DUGAN & MCNAMARA, INC., CONTRACTING STEVEDORES,

Petitioners,

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PHILADELPHIA MARINE TRADE ASSOCIATION; THE NATIONAL SUGAR REFINING COMPANY AND DUGAN & MCNAMARA, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, International Longshoremen's Association Local Union No. 1291, James T. Moock, Clifford Carter, Richard Askew, Alexander Talmadge, Paul Johnson, Jr., John J. Smith, Jr. and Martin Welsh, and Approximately One Hundred and Sixty Longshoremen Who Are

Employed by Dugan & McNamara, Inc., Contracting Stevedores, respectfully pray that a Writ of Certiorari issue out of and under the seal of this Court to review the decision and judgment of the Supreme Court of Pennsylvania rendered on April 27, 1955, which affirms an order of the Court of Common Pleas No. 1 of Philadelphia County, Pennsylvania, granting a preliminary injunction in favor of the respondents.

OPINIONS BELOW.

A preliminary injunction was granted ex parte on March 23, 1955, and was continued by further order on March 25, 1955 (Rec. 175a). The opinion of the Court of Common Pleas No. 1 of Philadelphia County, Pennsylvania, was rendered on April 1, 1955 (Rec. 176a-183a). The opinion is reported in 28 Labor Cases 69, 310.

The decision of the Supreme Court of Pennsylvania appended hereto as Appendix (A) was rendered on April 27, 1955, affirming the order of the court below. The opinion of that Court was rendered on June 27, 1955, and is reported in 28 Labor Cases 69, 326.

JURISDICTION.

The judgment of the Supreme Court of Pennsylvania affirming the order of the Court of Common Pleas No. 1 of Philadelphia County was entered on April 27, 1955, appended hereto as Appendix (B). Jurisdiction to review this case upon Writ of Certiorari is conferred upon this Court by 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED.

1. Does a state court have jurisdiction to issue a preliminary injunction for the alleged breach of a collective bargaining agreement in interstate and foreign commerce where the issues involved: (a) the right to bargain collectively and engage in other concerted activities under Sec-

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)."

Labor Management Relations Act, 1947, Section 8(b)(4) (29 U. S. C. 158(b)(4))

"(b) it shall be an unfair labor practice for a labor organization or its agents——

• • •

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: . . . (D) *forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class.*"

Labor Management Relations Act, 1947, Section 8(d) (29 U. S. C. 158(d)):

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided, That where there is in effect a collective-bargaining contract covering employees in an industry*

affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification——

"(1) *serves a written notice* upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) *offers to meet* and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) *notifies the Federal Mediation and Conciliation Service* within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) *continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later . . .*" (Italics ours.)

Labor Management Relations Act, 1947, Section 301(a) (29 U. S. C. 185(a)):

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without re-

tion 7 of the Labor Management Relations Act; (b) unfair labor practices on the part of the employer under Sections 8(a) (1) and (5) of that Act; (c) unfair labor practices on the part of the Union under Section 8(b)(4)(D) of the Act; (d) failure to comply with and violation of the provisions of Section 8(d) which requires, inter alia, adherence to the status quo of the original contract pending negotiation of any change in the contract?

2. May a state court grant an injunction because of an alleged breach of a collective bargaining agreement, where the pattern of federal legislation: (a) by Section 301 of the Labor Management Relations Act creates substantive rights and remedies in cases involving breaches of collective bargaining agreements; and (b) prohibits injunctions in such cases under the Norris-LaGuardia Act?

STATUTES INVOLVED.

Labor Management Relations Act, 1947, Section 7 (29 U. S. C. Sec. 157):

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, *to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaiinng or other mutual aid or protection . . .*" (Italics ours.)

Labor Management Relations Act, 1947, Sections 8(a)(1) and (5), (29 U. S. C. Sec. 158(a)(1) and (5)):

> "(a) It shall be an unfair labor practice for an employer——
>
> "(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."

• • •

spect to the amount in controversy or without regard to the citizenship of the parties."

Norris-LaGuardia Act, 29 U. S. C. 101:

"No court of the United States, as defined in sections 101-115 of this title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be isued contrary to the public policy declared in such sections. Mar. 23, 1932, c. 90, Sec. 1, 47 Stat. 70."

STATEMENT OF THE CASE.

Petitioners are Local 1291 of the International Longshoremen's Association, its officers and 167 of its members who are employees of the respondent, Dugan & McNamara, Inc. The Union is the bargaining representative of those longshoremen who load and discharge vessels within the Port of Philadelphia and vicinity, including Pennsylvania, New Jersey and Delaware.

Respondent, Philadelphia Marine Trade Association (PMTA) is the bargaining agent for the employers of longshoremen in the three state area. Dugan & McNamara (hereinafter referred to as Dugan) are employers of longshoremen who perform the stevedoring services for the respondent, National Sugar Refining Company,[1] at its plant in Philadelphia. National's plant is situated on the Delaware River and includes a refinery, and a pier for the docking of sugar-laden vessels.

The controversy stems from the unloading operation of the sugar from the vessels to the refinery. Prior to this dispute, the sugar, in bags, was hauled from the ship to con-

1. Hereinafter referred to as "National". This company is a member of PMTA, but does not employ stevedores and is not a party to the collective bargaining agreement.

veyer belts in small motor trucks, and the movement of the bags was then expedited and guided over various belts to a point where the sugar was dumped out of the bags and into a crusher in the refinery. This work had traditionally been done by longshoremen who were members of Local 1291 (Rec. 149a, 158a), and the unit of employees engaged in that service consisted of 167 men. These men were employed by Dugan under the terms of a collective bargaining agreement between the Union and PMTA.[2]

On February 14, 1955, PMTA, the bargaining representative for the employer, Dugan, gave notice to the Union of its intention to introduce a technological advance into the unloading operation at National's pier which would cut down the number of men in the working unit, and, in accordance with section 11(d) of the collective bargaining agreement, designated its *negotiating* committee, and requested a meeting with the Union committee to negotiate the number of men necessary to perform the operation under the new arrangement and modify the existing agreement accordingly (Rec. 145a). Pursuant to that request, the Union appointed its own negotiating team, pursuant to section 11(d) of the contract (Rec. 147a). The pertinent part of section 11(d) of the collective bargaining agreement provides (Rec. 133a):

> ". . . *In the event that technological advancements in machinery or methods in the future are introduced by the employers, the number of men thenceforth to be employed for handling the particular commodities shall be the subject of negotiation between the sub-committee herein created.*" (Italics ours.)

By this provision it was clearly understood that the number of men to be employed in the event of a technological advance would have to be "worked out by negotiations, just as any other collective bargaining agreement is worked out." (Rec. 153a.)

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2. The text of the agreement is set forth in the record, pages 125a to 140a.

The joint committee met on March 4, 1955, but failed to reach an agreement. At this meeting the employers contended that the jurisdiction of the Union ended where the conveyor belts began and that all the jobs from that point to the crusher belonged to the union of refinery workers (Rec. 149a-150a). They, therefore, offered to employ only 108 longshoremen out of the unit of 167 men previously employed. The Union on the other hand claimed jurisdiction to the crusher and charged the employer with attempting to enlarge the jurisdiction of the refinery workers because the rate of pay of the latter was substantially less than that of the longshoremen. This jurisdictional issue was again squarely raised in a letter from the Union Negotiating Committee to the employers, which was offered in evidence by the employers in the court below. The pertinent provisions of that document provides (Rec. 151a-152a):

> "First of all, it would appear that you are attempting to cut down the jurisdiction of the longshoremen and enlarge the jurisdiction of the sugar refinery workers. We desire to make it very clear to you here, as we have on prior occasions, that our jurisdiction continues until the point where the sugar is dropped out of the bags and mixes with the bulk cargo. This operation takes place within the sugar house itself, and we, therefore, must insist that all jobs which are required under the new system to that point be allocated to our longshoremen. It is apparent that you desire to have these jobs transferred to the refinery workers because the rate of wages for these workers is substantially less than that for the longshoremen, and we do not intend to surrender any jobs which properly belong to our men."

The employers charged that a jurisdictional dispute existed, and, moreover, expressly contended that it was a matter for the National Labor Relations Board. These

charges and contentions were set forth in the employers' letter to the Union Negotiating Committee as follows (Rec. 149a-150a):

> "We understand it to be your position that you assert jurisdiction over that part of the operation from the table to the crusher, and insist that longshoremen be assigned to this work regardless of whether or not it has been performed heretofore by members of another union. *This we believe to constitute a jurisdictional dispute between you and the other union* which cannot be resolved by the Joint Committee under Section 11(d) of our collective bargaining agreement. In the absence of an agreement between the International Longshoremen's Association and the other union to arbitrate this dispute, *the question of jurisdiction can be resolved only by the National Labor Relations Board.*" (Italics ours.)

Despite this recognition of the Labor Board's jurisdiction, the employers did not avail themselves of the remedies afforded by that agency, but, instead, sought to have the controversy submitted to arbitration (Rec. 149a), contending that, since the parties had not reached an agreement at the meeting, the arbitration clause in the agreement (Sec. 28) applied. The arbitration clause applies to grievances "arising under the terms and conditions of the agreement", but that clause further provides that the arbitrator "shall have no authority to change any of the terms or conditions of this agreement" (Rec. 137a). Accordingly, the union responded to the employers' letter as follows (Rec. 152a-153a):

> "We disagree with paragraph four of your letter wherein you state that the matter should be referred to arbitration under Section 28 of our collective bargaining agreement. We invite your attention to paragraph 11(d) of the agreement, which provides that in the event of technological advancement in machinery

or methods, the number of men to be employed shall be the subject of 'negotiation'. This provision was specifically designed to cover the precise situation that we are presently dealing with, and it was clearly understood that in such an event, the entire matter would have to be worked out by negotiations, just as any other collective bargaining agreement is worked out. We must, therefore, reject your contention that this case is subject to Section 28, which provides for arbitration of grievances and disputes in connection with the terms and conditions of work under the contract."

Furthermore, the union called to the employers' attention the rulings of the arbitrator in previous cases on this very point wherein the arbitrator had stated (Rec. 169a):

> *"The arbitrator's jurisdiction does not extend to adding a specific gang size to the contract. That is the duty of negotiators."* (Italics ours.)

The employers then appealed to Mr. Moock, the Vice President of the International Longshoremen's Association, requesting that he join with them in invoking the arbitration clause in lieu of negotiation (Rec. 154a-155a). Mr. Moock, in his response, supported the position of the local union, stating unequivocally that the case was one for negotiation and not arbitration. Furthermore, Mr. Moock pointed out that the employers had violated the status quo, contrary to their agreement, by putting the new machinery into operation, and had manned it with refinery workers, without the knowledge of the longshoremen's union (Rec. 157a-158a). Finally, Mr. Moock requested that the matter be referred to the Federal Mediation Service (Rec. 161a-162a). This is a requirement in such cases under Section 8(d)(3) of the Labor Management Relations Act, but the employers failed to comply with that requirement.

On March 22, 1955, the S.S. "Arizpa" docked at the National Sugar Company's pier laden with raw sugar, and the full complement of 167 longshoremen reported for work

as usual prepared to discharge the raw sugar into the refinery (Rec. 77a). At this point the employer took it upon himself to unilaterally change the agreement and announced at the entrance to the pier that he would employ only 108 men, and employment would be refused to the remaining 59 men in the unit (Rec. 86a). The employees refused to accept that unilateral determination (Rec. 88a), and they proposed instead that the joint negotiating committee come down to the jobsite and fix the number of available jobs while the new equipment was in operation, but the employers refused to permit more than the 108 men on the premises and they rejected the employees' proposal (Rec. 89a-90a).

The following day the employer filed its complaint in Court of Common Pleas No. 1 of Philadelphia County, Pennsylvania, alleging a breach of a collective bargaining agreement, and obtained an ex parte injunction against the union, its officers and the 167 individual longshoremen in the unit, restraining them from participating in the work stoppage, requiring the union to furnish men as required by the employer, and compelling the union and the individuals to summit the issue to and participate in an arbitration.[3]

Petitioners promptly removed the case to the United States District Court for the Eastern District of Pennsylvania, upon the ground that, since the complaint was based upon an alleged breach of a collective bargaining agreement, jurisdiction was granted to the federal court by Section 301 of the Labor Management Relations Act. The District Court remanded the case to the state court the same day upon the ground that it had no jurisdiction. Petitioners had no appeal from that decision because of specific statutory prohibition, 28 U. S. C. 1447(d).

3. In so doing the Court destroyed the status quo and not only compelled the union to accept the unilateral determination which locked out 59 men, but also to accept the employers' determination as to the jurisdictional dispute regarding the available jobs.

Upon remand, petitioners moved to dismiss upon the ground that the subject matter fell within the exclusive jurisdiction of the National Labor Relations Board, and that, therefore, the state court was without jurisdiction. This motion was denied by the trial court, who, after hearing on March 25, 1955, entered a further order continuing the injunction in full effect.

In his opinion filed on April 1, 1955, the trial judge stated that the refusal to arbitrate constituted a breach of the collective bargaining agreement and upon that ground stated: "Having reached this conclusion, we are satisfied that we have jurisdiction over the subject matter of this action and the power to enjoin that breach of contract." (Rec. 182a.)

On March 30, 1955, petitioners filed a charge of unfair labor practice with the National Labor Relations Board, alleging that the employer had violated Sections 7 and 8(a) (1) and (5) of the Labor Management Relations Act. The Board took jurisdiction of the subject matter and entered into an investigation to determine whether there was sufficient evidence to support the charge.

Meanwhile, an appeal was taken from the decision of Judge Kun to the Supreme Court of Pennsylvania. That Court, in a divided decision, affirmed the decree of the Court of Common Pleas. On the question of federal as against state jurisdiction, the majority held that there was no evidence to sustain the contention that the case involved an unfair labor practice or a jurisdictional dispute, and, further, the majority held that: "State courts retain the jurisdiction they have always had to enforce contracts notwithstanding Section 301 of the Labor Management Relations Act." On the question of "negotiation" as against "arbitration", the majority held that if the parties could not agree in negotiation they were then required to submit the issue to arbitration.

The dissenting opinion of Mr. Justice Musmanno, after a comprehensive review of the facts and the authorities,

concludes that the state court lacked jurisdiction, particularly in view of this Court's decisions in *Weber v. Anheuser-Busch, Inc.*, U. S. , 99 L. Ed. 386, and *Garner v. Teamsters, C. & H. Local Union*, 346 U. S. 483, 98 L. Ed. 228, 74 S. Ct. 161. The dissenting opinion holds that Congress completely preempted the field so far as the issues in this case are concerned; that by Section 301 of the Labor Management Relations Act Congress gave exclusive jurisdiction to the federal courts in all cases involving violations of a collective bargaining agreement, and, under the Norris-LaGuardia Act labor injunctions were prohibited to restrain such violations. In any event, Mr. Justice Musmanno held that Sections 7 and 8 of the federal labor act completely deprived the state court of any jurisdiction. On the merits, the dissenting opinion holds that negotiation, which is a federally protected right, may not be confused with or impaired by arbitration and that the agreement in this case is not susceptible to any construction which would make the negotiation clause subject to the arbitration provision.

REASONS RELIED UPON FOR GRANTING THE WRIT.

Point One.

In Assuming Jurisdiction of the Subject Matter, the Court Below Rendered a Decision in Direct Conflict With the Applicable Decisions of This Court, and Particularly With the Decisions in Weber v. Anheuser-Busch, Inc., U. S. , 99 L. Ed. 386 (Advance P—) and Garner v. Teamsters, C. & H. Local Union, 346 U. S. 485, 98 L. Ed. 228, 74 S. Ct. 161.

In the enactment of the Labor Management Relations Act, Congress intended to provide a uniform system of substantive rules to govern labor controversies, and the forums for the enforcement of those rights. The applicable rules of law pertinent to the issues here involved were most recently pronounced by this Court in *Garner v. Teamsters, C. & H. Local Union*, 346 U. S. 485, 98 L. Ed. 228, 74 S. Ct. 161 and in *Weber v. Anheuser-Busch, Inc.* U. S. , 99 L. Ed. 386. (Advance p. .)

In the Garner case, a labor union peacefully picketed the loading platform of an interstate trucking company for the purpose of inducing its employees to join the union. No labor dispute was involved and none of the pickets were employees of the trucking company. Drivers for other companies refused to cross the picket line, resulting in a falling off of the company's business. The state court entered an injunction on the ground that the activities of the teamsters union violated the Pennsylvania Labor Relations Act.

In holding that the state court had no jurisdiction, this court held: (p. 490)

> "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to

confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. *Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies.*" (Italics ours.)

* * *

"We conclude that when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right."

In the *Anheuser-Busch* case, the Machinists Union struck the Anheuser-Busch Company, when the latter refused to insert a clause in the contract which would have allocated the work to contractors employing only men from the Machinists Union. This Court reversed the Supreme Court of Missouri and held that the state court was without jurisdiction of the subject matter.

The dissenting opinion in the instant case holds that the decision of the majority clearly invades the prohibited area of federal jurisdiction, and particularly that the decision below is in direct conflict with the *Garner* and *Anheuser-Busch* cases. The dissenting opinion of Mr. Justice Musmanno contains a painstaking review of the federal authorities which clearly disclose a lack of state jurisdiction. In reviewing those most recent pronouncements of this court, Mr. Justice Musmanno, in dissenting from the majority below said:

"The Supreme Court of the United States further approved the Garner case in its decision in the Weber v. Anheuser-Busch, Inc., case (handed down on March 29, 1955, 23 L. W. 4150 (27 Labor Cases P. 69, 0621)) and specifically declared that: 'A state may not enjoin under its own labor statute conduct which has been made an unfair labor practice under the federal statutes.'

"In reviewing its decisions on the subject of Federal-State labor relations, the Court, speaking through Mr. Justice Frankfurter, said: '1. The Court has ruled that a *State may not prohibit the exercise of rights which the Federal Acts protect.* Thus, in *Hill v. Florida,* 325 U. S. 538 (9 Labor Cases P. 51, 208) the State enjoined a labor union from functioning until it had complied with certain statutory requirements. The injunction was invalidated on the ground that the Wagner Act included a "Federally established right to collective bargaining" with which the injunction conflicted. *International Union v. O'Brien,* 339 U. S. 454 (19 Labor Cases P. 65, 761), involved the strike-vote provisions of a state act which prohibited the calling of a strike until a specific statutory procedure had been followed. The State act was held to conflict not only with the procedure and other requirements of the Taft-Hartley strike provisions but also with the protection afforded by Sec. 7 of that Act (footnote). In *Amalgamated Association v. Wisconsin Employment Relations Board,* 340 U. S. 383, the State court issued an injunction under a statute which made it a misdemeanor to interrupt by strike any essential public utility services. It was held that the State statute was invalid in that it *denied a right which Congress had guaranteed under Sec. 7 of the Taft-Hartley Act*—the right to strike peacefully to enforce union demands for wages, hours and working conditions.'

"In the *Anheuser-Busch* case the respondent had filed a charge of unfair labor practice with the National Labor Relations Board and had obtained an injunction in the State court. Although the Board ruled that no labor practice was involved, the Supreme Court held that the Board, and not the State Court, was empowered to pass upon the issue declaring: '. . . even if it were clear that no unfair labor practices were involved, it would not necessarily follow that the state was free to issue its injunction. If this conduct does not fall within the prohibitions of Sec. 8 of the Taft-Hartley Act, it may fall within the protection of Sec. 7 as concerted activity for the purpose of mutual aid or protection.

" 'Respondent itself alleged that the union conduct it was seeking to stop came within the prohibitions of the federal act, and yet it disregarded the Board and obtained relief from a state court. It is perfectly clear that had respondent gone first to a federal court instead of the state court, the federal court would have declined jurisdiction, at least as to the unfair labor practices, on the ground that *exclusive primary jurisdiction was in the Board.* As pointed out in the *Garner* case, 346 U. S. at 491, the same considerations apply to the state courts.'

"It appears to me that the Majority Opinion has failed to give due weight to the decisions and the reasoning therein by the Federal courts on the subject before us. For instance, the celebrated Judge Learned Hand, in the case of *International Brotherhood v. National Labor Rel. Bd.,* 181 F. 2d 34, 36, said in 1950 that: 'It is now abundantly established that in the Labor Relations Acts Congress meant *to exercise to the fullest extent its power over interstate commerce.*' "

In the instant case the issues so clearly fall within the purview of the Labor Management Relations Act as to leave

no doubt about the jurisdiction of the Labor Board to the exclusion of the state court. From the very outset of this controversy, the stalemate arose because of the jurisdictional dispute. The employers claimed that the longshoremen had jurisdiction only to the conveyor belt, and that the jobs along the conveyor belt belonged to the refinery workers. The longshoremen refused to accept this conclusion and claimed all the jobs on the conveyor belt to the crusher. That this constituted a jurisdictional dispute is admitted by the employers in their own letter heretofore cited. It inescapeably follows that the employer, on the basis of its own charge had a full and immediately available remedy under Section 8(b) (4) (D) of the Act, which provides that it shall be an unfair labor practice for a labor organization, or its agents to force or require an employer "to assign particular work to employees in a particular labor organization . . . rather than to employees in another labor organization . . ." On the basis of that provision the employer had only to apply to the National Labor Relations Board for a determination of the question. Under the doctrine of the *Garner* and *Anheuser-Busch* cases, the jurisdiction of the Board was exclusive and the state court was precluded from exercising any jurisdiction. The majority of the court below gave no consideration to this aspect of the case, and their decision is in direct conflict with the rule which this Court has laid down.

Another aspect of the case which brings it within the scope of the federal labor act is the issue of the failure of the employer to negotiate in good faith and interfering with the employees' rights to bargain collectively and to engage in other concerted activities.

When the parties entered into the existing collective bargaining agreement, they left open the right to bargain further in the event the employer so changed his operations as to require a reduction in the employee unit. The parties deliberately and advisedly agreed to "negotiate" new terms to the existing agreement in the event of such a con-

tingency. Both parties have been engaged in labor relations and in collective bargaining for many years and each must be presumed to know the significance of the terms generally employed in labor contracts. Such terms as "negotiation" and "arbitration" are in general use in labor agreements and they are in marked contrast to each other. The parties in this case limited arbitration to any dispute "arising under the terms of this agreement", and took the added precaution to limit the arbitrator's authority and jurisdiction so that he had no power "to change any of the terms or conditions of this agreement" (Sec. 28). On the other hand, Section 11(d) was intended to create new terms and conditions to be added to the contract and for this purpose the parties used the term "negotiate". Thus, if the employer should introduce a technological advance, as here, the parties were then required to sit down at the bargaining table and *"negotiate"* a modification of the agreement. While this does not mean that the employer is legally required to make any concession, he is, nevertheless, required to bargain in good faith, and certainly he must not do anything to impair the employees' rights to bargain or to otherwise interfere with the employees' concerted activities as outlined in Section 7 of the Act. In this case the employer not only failed to bargain but he threw every roadblock into the employees' path and used every means to impair the guaranteed rights of the employees.

It was apparent from the very beginning that the employers did not intend to "negotiate" as they would be expected to do if they really wanted to effect a new agreement. Every negotiation starts out with an impasse, with the union seeking the maximum and the employer offering less than the minimum. Persistent discussion and bargaining, however, leads to compromises and eventually to an agreement. In this case, at the very first meeting when the discussion of the issues took place, the employers unilaterally cut down both the jurisdiction of the union and reduced the employee unit from 167 men to 108 men. When the

union refused to accept those terms, the employers immediately claimed an "impasse" and demanded that the case be submitted to arbitration. Such conduct can hardly be considered as "bargaining" such as is expected and required in "negotiations". These men had sat with each other across the bargaining table for many years and had actually bargained and hammered out many contracts. A brief excerpt from the testimony of Mr. Corry, the secretary of the employer association, demonstrates how negotiations were generally conducted by these parties (R. 64a):

> "Q. Each time when you negotiate a contract do the negotiations flow very smoothly?
>
> "A. (No answer.)
>
> "THE COURT: Is that a proper question?
>
> "MR. FREEDMAN: Yes, it is, and your Honor will see why later on.
>
> "THE WITNESS: Can I answer it 'yes' or 'no'?
>
> "THE COURT: Whatever way you want.
>
> "By MR. FREEDMAN:
>
> "Q. Many times you reach impasses, don't you?
>
> "A. Yes.
>
> "Q. But you keep coming back and you keep negotiating, don't you?
>
> "A. Yes.
>
> "Q. And so far you have negotiated the contract in every instance, haven't you?
>
> "A. Yes."

It may be stated without fear of dispute that such is the practice and general experience in the vast majority of negotiations. An issue is thus clearly raised as to the good faith of the employer in negotiating a modification to the agreement, the decision of which is exclusively the function of the Labor Board. So too is the suspicious circumstance that the employers refused to discuss the jobs available on the conveyor belt to the crusher, on the ground that these jobs belonged to the refinery workers. Had this been

a bona fide position, the employer could have immediately received relief on that score by applying to the Labor Board. The failure of the employer to bring the matter to the attention of the Board leads to the conclusion that the employer's position was not advanced in good faith, but for the purpose of creating the so-called "impasse", to lay the foundation for the demand that the case be submitted to arbitration. By thus attempting to substitute arbitration for the legally guaranteed rght to "negotiation", the employer was not only acting in bad faith but was actually interfering with and attempting to impair the employees' right to collective bargaining. Moreover, when the employers obtained the injunction the employees and their union were actually forced and coerced to abandon collective bargaining and to submit to and participate in arbitration in place of negotiation. This injunction had the direct effect of destroying the status quo and the employees' legal rights guaranteed under Section 7 of the Act. The Court below gave no consideration to any of these circumstances, as required by the decisions of this Court in determining the jurisdiction of the state court.

Another aspect of this case which brings it within the Labor Management Relations Act is indicated by Section 8(d) which deals with the termination and modification of collective bargaining agreements. That section provides, in part, that where there is already in existence a collective bargaining agreement, the duty to bargain collectively also means that neither party may modify the contract unless the party desiring such modification (1) serves written notice on the other sixty days prior to the intended modification; (2) offers to meet and "*negotiate*" new terms; (3) notifies the Federal Mediation and Conciliation Service within thirty days after notice; and (4) "*continues in full force and effect, without resorting to strike or lockout all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.*"

The violation of any of those provisions is an unfair labor practice. The employers here wilfully violated those provisions. It is true that the employers conformed to the first two requirements by serving written notice of intention to modify the contract, and they offered to meet for the purpose of negotiating new terms, but they clearly violated the third and fourth requirements by failing to notify the Federal Mediation and Conciliation Service and they failed to continue the existing agreement in effect, but on the contrary unilaterally made a modification of the agreement, in direct violation of the fourth provision. The employers' notice of intention to modify the agreement was mailed on February 15, 1955 (R. 145a). The termination date in the contract was September 30, 1955 (R. 142a). The employers unilaterally made a change in the agreement on March 22, 1955, when they cut down the employee unit from 167 to 108 (R. 71a-72a). That this action was a clear disregard and violation of Section 8(d) is hardly open to dispute. That it constituted an unfair labor practice under that section is likewise hardly open to question. In any event it is clear beyond any doubt that the subject matter was covered by the National Labor Relations Act and, consequently, any assertion of jurisdiction by the state courts must necessarily be held invalid.

Where the federal law is thus applicable it is supreme and provides the exclusive remedy. The state law may not be invoked under these circumstances even though the remedy or relief in the state court is entirely different than that which is afforded under the federal law. This Court held in *Weber v. Anheuser-Busch, Inc.*, supra: (L. Ed. p. 394, Advance p.)

> *"Controlling and therefore superseding federal power cannot be curtailed by the State even though the ground of intervention be different than that on which federal supremacy has been exercised."*

It is clear that the federal legislation has completely entered the field so far as the subject matter in this case

is concerned. Accordingly, under the rule laid down by this Court in the *Garner* and *Anheuser-Busch* cases, the state court has no jurisdiction over the merits of any question or even to determine whether there has been a violation of any of the provisions of the federal legislation. Such issues fall within the exclusive jurisdiction of the National Labor Relations Board.

The decision of the Court below which would vest the state court with jurisdiction is in direct conflict with the applicable doctrine pronounced by this Court.

Point Two.

The Scheme of the Federal Legislation Is to Place Exclusive Jurisdiction for the Violation of Any Collective Bargaining Agreement in the Federal Courts and to Abolish Injunctions for Violations of Such Agreements. The Question Is a Novel One Which Has Received Varying Interpretations From the State and Federal Courts, and in the Interests of Uniformity Should Be Decided by This Court.

The pattern of federal legislation, as has already been indicated, was intended to encompass virtually the entire field of labor relations in matters involving interstate and foreign commerce. The right of collective bargaining and the right to strike were guaranteed and protected; sanctions were created for the proper regulation of the industry and the protection of the individuals on both sides of the controversy. In the enactment of this legislation, Congress necessarily had to have in mind the collective bargaining agreement and in fact the legislation quite frequently makes express reference thereto. Nor did Congress overlook the problems which might arise from the breach of a collective bargaining agreement. By the enactment of Section 301 of the Labor Management Relations Act, Congress expressly vested the federal courts with original jurisdiction in all matters involving the breach of a collective bargaining agreement. That section broadly provides that the fed-

eral courts shall have jurisdiction of all suits for violation of contracts between an employer and a labor organization. In the absence of any other qualifying legislation, such a provision could be employed to support a complaint for injunctive relief for the violation of a collective bargaining agreement, just as in the common law state courts injunctive relief is afforded generally to restrain the violation of a business contract. However, Section 301 does not stand by itself, but it rather constitutes an important segment in the over-all pattern of legislation. It must be considered and construed with the remaining sections of the Labor Management Relations Act and, in addition, with other legislation such as the Norris-LaGuardia Act (29 U. S. C. A. 101 et seq.). In this field of labor relations, Congress expressly declared it to be the public policy of the land that:

> ". . . the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

Upon this premise Congress enacted the Norris-LaGuardia Act to abolish labor injunctions except in certain specified and very limited instances. The Norris-LaGuardia Act prohibits "the United States Courts" from issuing such labor injunctions, but it would be absurd to presume that Congress was simply regulating the federal

courts rather than the industry. The whole concept of the legislation is to control and regulate the labor relations in interstate and foreign commerce and the clear purport of the Norris-LaGuardia Act was intended to fit right into that scheme of legislation and make uniform the practice of restricting labor injunctions in the entire field. The Norris-LaGuardia Act cannot be isolated from all of the other legislation, but it must be construed in the context of those statutes, and its intended purpose drawn from the legislation as a whole. Judge Learned Hand observed in *International Brotherhood v. National Labor Relations Board*, 181 F. 2d 34, that the legislation as a whole clearly establishes "that in the Labor Relations Acts Congress meant to exercise to the fullest extent its power over interstate commerce." Viewed in this light it may fairly be stated that Congress preempted the field in every respect insofar as the formation of collective bargaining agreements is concerned and the remedies for any violation thereof.

The authoritative decisions clearly support that view. In *Shirley-Herman Co. v. International Hodcarriers Building & Common Laborers Union of America*, 182 F. 2d 806, the employer instituted an action against the union, claiming damages because of a work stoppage in violation of a collective bargaining agreement. The defendant union contended that before there could be any recovery the plaintiff was required under tne New York law to show bad faith. The Court of Appeals for the Second Circuit held that the federal legislation had completely preempted the field, excluding the application of any state law, and said: (p. 809)

> ". . . This contention is meaningful only on the view that Sec. 301 of the Labor Management Relations Act, 29 U. S. C. A. Sec. 185, merely conferred jurisdiction upon the federal courts to entertain the action, and that the substantive principles of law to be applied must be those of New York. But Sec. 301 goes further than defendant conceives; *it created a remedy where*

none existed before and provided a forum in which to enforce it . . ."

• • •

"The right thus created makes no requirement that bad faith be shown. In view of the overriding power of Congress to regulate interstate commerce, it must be upheld and *state law as to bad faith is therefore of no* relevance . . ." (Italics ours.)

By a like process of reasoning no other state law could be applicable to interfere in any fashion with this federal right and remedy, and this would necessarily include state injunctive laws and other common law and statutory provisions emanating from the states. This view is, likewise, supported by the opinion of this Court in the *Garner* case, where Mr. Justice Jackson, speaking for the court, said: (pp. 500-501)

"We conclude that when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right."

The Court of Appeals for the Ninth Circuit reached the same conclusion in *Schatte, et al. v. International Alliance of Theatrical Stage Employees, et al.*, 182 F. 2d 158, a case involving an alleged breach of contract. In construing the substantive and procedural aspects of Section 301 the Court held: (p. 164)

". . . Section 301 was not enacted merely to provide a new forum for the enforcement of contracts theretofore enforceable solely in the state courts. Had such been its sole purpose the constitutionality of the section as to actions in which diversity of citizenship was lacking might well be questioned. But the wording of the section and its place in the Taft-Hartley Act demonstrates that the section was designed to protect

interstate and foreign commerce by creating a new substantive liability, *actionable in the federal courts,* for the breach of a collective bargaining contract in an industry affecting interstate or foreign commerce . . ." (Italics ours.)

. . .

". . . It is well settled that the exclusive remedy for the commission of an unfair labor practice was in proceedings before the National Labor Relations Board under the Wagner Act. 29 U. S. C. A. Sec. 160(a); Amalgamated Utility Workers v. Consolidated Edison Co. of New York, 1940, 309 U. S. 261, 60 S. Ct. 561, 84 L. Ed. 738. The same is true under the National Labor Relations Act as amended by the Taft-Hartley Act, *except in so far as the district courts are given jurisdiction over certain suits for injunctions brought by the Government and over suits brought by private parties under Secs. 301 and 303,* discussed above . . ." (Italics ours.)

In *Fay v. American Cystoscope Makers, Inc., et al.,* U. S. D. C., S. D. N. Y., 98 F. Supp. 278, it was alleged by one union that there was a conspiracy between the employer and another union to breach an existing collective bargaining agreement, and an action was instituted in the state court which was thereafter removed to the Federal court by one of the defendants. The union attempted to have the case remanded to the state court, contending that there was concurrent jurisdiction and that the plaintiffs had the option to sue either in the state or federal courts. In refusing to remand[4] and in reviewing the nature and intent of the legislation, Judge Ryan held as follows: (p. 280)

"The jurisdiction of the District Court under 29 U. S. C. A. 185 depends upon one of the parties' holding

4. Compare this case with the decision of the U. S. District Court in the instant case remanding the case to the state court upon the ground that the federal court had no jurisdiction.

a particular status, that is, a union representing employees in an industry affecting commerce. Where that status is asserted to exist, but is not mentioned in the complaint, the Court is of the opinion that it may apply the status rule on removal and look beyond the complaint to ascertain the fact. To hold otherwise would vest the plaintiff with power to withhold from a defendant the use of that forum which Congress has chosen to make available.

"Such power in the plaintiff could only be justified if Section 185 left intact a separate and independent state cause of action for contract between unions and employers where the component of interstate commerce was present. *If that were the fact, plaintiff might properly rely on the principle that he may elect to rely upon whichever law he desires.* Fair v. Kohler Die & Specialty Co., 228 U. S. 22. However, in the light of the determination that the section creates a new, Federal, substantive right (Shirley-Herman Co. v. International Hod Carriers, etc., 182 F. (2d) 806, (18 Labor Cases 65, 810) (C. A. 2, 1950)), *it seems clear that Congress preempted the field in this area. The suggestion that plaintiff should be permitted to compel defendant to litigate a Federal claim in a state court when Congress has explicitly made available a Federal forum is indefensible . . .*" (Italics ours.)

In *Amalgamated Association of Street Electric Railway Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 95 L. Ed. 364, 19 Labor Cases 66, 193, this Court, in construing the legislation, pointed out: (p. 397)

"When it amended the Federal Act in 1947, Congress was not only cognizant of the policy questions that have been argued before us in these cases, but it was also well aware of the problems in balancing state-federal relationships which its 1935 legislation had raised. The legislative history of the 1947 Act refers

to the decision of this Court in Bethlehem Steel Co. v. New York Labor Board, 330 U. S. 767 (12 Labor Cases, 51,245) (1947), and, in its handling of the problems presented by that case, *Congress demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation 'preempts the field that the act covers in so far as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired state regulations to be operative.* This Court, in the exercise of its judicial function, must take the comprehensive and valid federal legislation as enacted and declare invalid state regulation which impinges on that legislation." (Italics ours.)

An opposite view regarding the interpretation of Section 301 was taken by the Supreme Court of Pennsylvania in *General Building Contractors Association v. The International Union of Operating Engineers,* 370 Pa. 73, 87 A. 2d 250, where there was likewise involved the question of a violation of a collective bargaining agreement. The Pennsylvania Supreme Court held that the state court had concurrent jurisdiction with the federal courts under Section 301, and that, therefore, the state court was free to issue an injunction to restrain a violation of a collective bargaining agreement in interstate commerce.

The decision is in direct conflict with the decisions of the Court of Appeals for the Second Circuit in the *Shirley-Herman* case, *supra,* and the Court of Appeals for the Ninth Circuit in the *Schatte* case, *supra.* This Court has never ruled upon this important federal question, although in the *Garner* case, *supra,* this Court noted its disapproval of the conflict which was created by the decision in the *General Building Contractors* case.

During the early stages of the *General Building Contractors* case, a petition was filed in the United States District Court to restrain the prosecution of the state court action for an injunction enjoining a breach of a collective

bargaining agreement. The District Court dismissed the petition on the ground that it had no jurisdiction to restrain a state court. This Court, in commenting upon that decision in the *Garner* case (L. Ed. p. 244) stated:

> "International Union of Operating Engineers v. William D. Baker Co. (GBCA) (DC Pa.) 100 F Supp 773, illustrates the potentialities of conflict. A disagreement arose between a union and several contracting associations over a collective bargaining agreement. The agreement contained a no-strike provision. The union, contending that the agreement had come to an end, threatened to strike. The association obtained an injunction in the Pennsylvania courts restraining the members of the union from striking. The union prayed for an injunction in federal district court to prevent the associations from enforcing their state decree. The federal court held that, even if exclusive jurisdiction over the subject matter was in the federal courts, it had no power to enjoin enforcement of the state injunction. Whether this conclusion be correct or not (for a critical comment see Note, 48 Northwestern U L Rev 383 (1953)), *the case exemplifies the type of difficulty inherent in recognizing state supplemental relief in an otherwise exclusive federal field.*" (Italics ours.)

See also the comment of the District Court in *Textile Workers Union of America v. American Thread Company*, 113 F. Supp. 137, where the court, after reviewing the authorities on both sides, said: (p. 141)

> "Since both suggested constructions of Sec. 301 present difficulties, only when the Supreme Court of the United States speaks shall we know finally whether federal courts acting under Section 301 are to apply federal or local law to determine the *rights* of the parties."

It may be presumed that the Congress in enacting legislation in the field of labor relations and interstate commerce intended that there should be uniform application of the law in order to stabilize and properly regulate the industry. The decision of the court below tends to disrupt the patterns designed by the Congress. The result will follow, as Judge Wyzanski pointed out in the *Textile Workers* case, that "if the state court is not required to apply federal law, then with respect to the same contract two conflicting rules are possible, depending upon the choice of forum."

Viewing the pattern of federal legislation as a whole, it is evident that Congress intended to provide a uniform system of operation and control over labor organizations in interstate and foreign commerce, and it is, likewise, apparent that the federal legislation completely preempted the field, not only with respect to the negotiation leading to collective bargaining agreements, but it also intended that the substantive rights under those agreements and the procedural remedies for the enforcement of those rights should be regulated and controlled exclusively by the federal statutes. Section 301 of the Labor Management Relations Act provided the substantive rights and the remedy to enforce them for a breach of a collective bargaining agreement. The Norris-LaGuardia Act outlined the circumstances under which injunctive relief was available in dealing with all phases of labor relations. To permit the states to inject their own laws into this field, which has been so thoroughly preempted by Congress, would immediately break down the entire system. The Norris-La Guardia Act would be meaningless if a litigant could obtain relief in a state court which was prohibited under that Act. Such is precisely the effect of the decision in the instant case. Section 301 in express terms vests jurisdiction in the United States District Courts for the breach of the collective bargaining agreement. Had the employers instituted their action in that forum, they would have been barred from obtaining injunc-

tive relief because of the restraint imposed by the Norris-LaGuardia Act. To permit an employer to obtain the same kind of injunctive relief in the state court, which is expressly prohibited in the federal court, would impute a weakness to the entire federal system, which could not possibly have been intended by Congress.

It is, therefore, submitted that a decision of this Court is clearly indicated to pass upon this important issue.

CONCLUSION.

For the foregoing reasons, it is respectfully requested that the petition for a writ of certiorari be granted.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
CHARLES LAKATOS,
AVRAM G. ADLER,
1415 Walnut Street,
Philadelphia 2, Penna.,
Counsel for Petitioners.

APPENDIX A TO PETITION

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. 216. January Term, 1955.

PHILADELPHIA MARINE TRADE ASSOCIATION; THE NATIONAL SUGAR REFINING COMPANY; AND DUGAN & McNAMARA, INC.

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL UNION NO. 1291, JAMES T. MOOCK, ATLANTIC COAST DISTRICT VICE-PRESIDENT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, CLIFFORD CARTER, INTERNATIONAL ORGANIZER FOR THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, RICHARD ASKEW, PRESIDENT OF LOCAL UNION NO. 1291, AND ALEXANDER TALMADGE, PAUL JOHNSON, JR., JOHN J. SMITH, JR. AND MARTIN WELSH, DELEGATES OF LOCAL NO. 1291, AND APPROXIMATELY ONE HUNDRED AND SIXTY LONGSHOREMEN WHO ARE EMPLOYED BY DUGAN & McNAMARA, INC., CONTRACTING STEVEDORES,
Appellants.

OPINION OF THE COURT

Filed: June 27, 1955

HORACE STERN, *C. J.*

Shortly after the argument on this appeal and because of the urgent need for a prompt decision we entered an order affirming the grant and the continuance of a preliminary injunction by the court below. This opinion is written in support of the decision thus rendered.

Philadelphia Marine Trade Association is a non-profit corporation comprising in its membership steamship lines, steamship agents, stevedoring companies, tugboat and barge companies, marine terminal operators, warehouses and companies rendering other services in and to the marine industry in and about the Port of Philadelphia. On March 12, 1954, as collective bargaining agent for those of its members who employ longshoremen, it entered into an agreement with the International Longshoremen's Association for the Port of Philadelphia and Vicinity and its affiliated Locals 1290, 1291, 1332, 1566 and 1694, as collective bargaining agent for deep-sea longshoremen in the Port of Philadelphia. The agreement, which was to be in effect until September 30, 1955, contained various provisions in regard to the loading and unloading of ocean-going ships in the Port of Philadelphia and vicinity. One of its obvious purposes was to prevent work stoppages, a joint sub-committee of the parties being established to make recommendations for that purpose.

In February, 1955, the National Sugar Refining Company, which is a member of the Philadelphia Marine Trade Association and owns and operates a pier on the Delaware River where ocean-going vessels berth for the purpose of discharging raw sugar to be refined at its refinery, contemplated putting into operation at its pier certain improved unloading facilities known as a monorail system. This innovation apparently involved the displacement of a number of longshoremen engaged in the handling of the cargoes of sugar, but Local 1291 did not concede that such a result necessarily followed. The question of the number of men to be employed at the pier upon the installation of the new system thus became a matter of controversy between the Trade Association and the Union.

The collective bargaining agreement between the parties provided (Paragraph 11(d)) as follows: "Nothing herein contained shall be construed as warranting a demand on the part of the union to change established methods of

operation or to change the number of men heretofore employed in gangs, providing that a committee of three representatives of the union and three representatives of the employers shall immediately following the execution of this agreement hold meetings for the purpose of reaching an agreement upon the number of men on certain commodities where disputes regarding the number of men may exist. *In the event that technological advancements in machinery or methods in the future are introduced by the employers, the number of men thenceforth to be employed for handling the particular commodities shall be the subject of negotiation between the sub-committee herein created.*

Pursuant to this provision each of the parties designated three representatives to act on such a committee, but, after holding several meetings, the committee was unable to reach an agreement and the question then naturally arose as to what was to be done in view of the impasse.

Paragraph 28 of the agreement provided as follows: "All disputes and grievances of any kind or nature whatsoever arising under the terms or conditions of this agreement, and all questions involving the interpretation of this agreement, shall be referred to a Grievance Committee which shall consist of two members selected by the employer and two members selected by the Union. Should the Grievance Committee be unable to resolve the issue submitted, they shall immediately refer the matter to the Rev. Dennis J. Comey, S. J., as Impartial Arbitrator. The Impartial Arbitrator shall have unlimited authority in resolving any issues submitted to him, and shall likewise have unlimited authority to establish his own rules of procedure provided that he shall have no authority to change any of the terms or conditions of this agreement. Should it become necessary at any time during the effective period of this agreement to select a successor to the Impartial Arbitrator herein named, he shall be selected by agreement of the parties hereto and any such successor shall have all of the powers and authority granted to the Impartial Arbitrator named herein."

Paragraph 29 provided: "No Steamship Company or Contracting Stevedore and no official, District Council or Local of the International Longshoremen's Association shall make any change in this agreement nor render any interpretation of any provision thereof which shall be binding on any of the parties hereto. A difference of opinion regarding the meaning of any provisions of this agreement, which cannot be amicably adjusted between the parties, shall be determined only by an Arbitration Committee appointed in accordance with Clause 28."

A definite proposal was made by the Trade Association for the settlement of the controversy but the Union rejected it. The Trade Association then called upon the Union to join in the submission of the matter to arbitration in accordance with the provisions of Paragraph 28, but the Union took the position that Paragraph 11(d) was not subject to the arbitration procedure prescribed by Paragraph 28 and refused to appoint representatives to serve on a Grievance Committee as therein provided. The Sugar Refining Company put the new operation into effect, reducing the number of men employed from some 160 to 108, whereupon the longshoremen refused to work at the pier unless as many of them were employed as before the new system was installed. The present action was then instituted by the Trade Association, the Sugar Refining Company and Dugan & McNamara, Inc., the last named being the contractor which furnishes all stevedoring services to the Sugar Refining Company at its pier and is the employer of the longshoremen here involved. The defendants named in the action were the Local Union No. 1291, certain of its officers and officials, and the 160 longshoremen employed by Dugan & McNamara, Inc. who had stopped work. Plaintiffs prayed for an injunction restraining the Union from violating the collective bargaining agreement, from failing and refusing to participate in the arbitration procedures prescribed by the agreement, from committing any action in violation of the no work-stoppage agreement, and from

refusing to supply longshoremen to Dugan & McNamara, Inc. for stevedoring services at the pier. As a result of the work stoppage Dugan & McNamara, Inc. was prevented from fulfilling its contract with the Sugar Refining Company, all unloading of sugar cargoes ceased, and great numbers of the Company's employes were thrown out of employment. The court, on affidavits, issued a preliminary injunction as prayed for, and subsequently, after a hearing, continued the injunction until final hearing. From that order defendants filed the present appeal.

The Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, § 4, as amended by the Act of June 9, 1939, P. L. 302, provides that it should not apply in any case involving a labor dispute which was in disregard, breach or violation of, or which tended to procure the disregard, breach or violation of, a valid subsisting labor agreement arrived at between an employer and the representatives designated or selected by the employes for the purpose of collective bargaining.

Defendants present several questions for determination, one of which challenges the jurisdiction of the court below on the ground that plaintiffs' complaints are cognizable only in a Federal and not a State court. This contention is specifically answered by the decision of this court in *General Building Contractors' Association v. Local Union No. 542*, 370 Pa. 73, 87 A. 2d 250 (cited with approval in *Garner v. Teamsters, Chauffeurs and Helpers, Local Union No. 776*, 373 Pa. 19, 25, 94 A. 2d 893, 897). In that case we upheld the granting of an injunction which enjoined the violation of a collective bargaining agreement by a labor union. It was there argued that Congress, by enactment of the Labor-Management Relations Act of 1947, had taken from the State courts the jurisdiction to issue such an injunction, but we held that neither that Act nor any other Federal legislation deprived the State courts of their inherent equity powers for the enforcement of contracts. We pointed out that Section 301 of the Labor-Man-

agement Relations Act, giving jurisdiction to District Courts of the United States of suits for violation of contracts between an employer and a labor organization representing employes in an industry affecting commerce, did not indicate that such jurisdiction was to be exclusive; moreover, it applied only to suits for the recovery of damages, not for injunctive relief, the right to grant which had been denied to such courts by the Norris-LaGuardia Act of 1932. We said (p. 82, A. p. 255): "There does not exist any repugnance or conflict, direct or indirect, between the exercise of jurisdiction by a court of equity as in the instant case and the Labor Management Relations Act and the Norris-LaGuardia Act. There are no statutes which would curtail the exercise of jurisdiction by the Court in the circumstances here presented. Prevention of violation of obligations contained in a contract by injunctive relief is a power traditionally exercised by courts of this Commonwealth. Congress has not acted upon the specific subject matter at issue. Enforcement of contracts may be required according to the usual processes of the law."

That State courts retain the jurisdiction they have always had to enforce contracts notwithstanding Section 301 of the Labor-Management Relations Act has been held in several Federal cases: *Castle & Cooke Terminals, Ltd. v. Local 137 of International Longshoremen's and Warehousemen's Union*, 110 F. Supp. 247; *Associated Telephone Co., Ltd. v. Communication Workers of America, C. I. O.*, 114 F. Supp. 334. In regard to that Act it was pointed out in *Alcoa Steamship Company, Inc., v. McMahon*, 81 F. Supp. 541, 543, that the Senate Bill made violation of a collective bargaining agreement an unfair labor practice subject to injunction as such, but this provision was deleted before final passage, while the House Bill specifically provided that the Norris-LaGuardia Act should be inapplicable to suits for breach of collective bargaining agreements brought in the Federal courts, but that provision too was deleted before final adoption of the measure. In fact the

Congressional conference committee report on the Labor-Management Relations Act, in referring to the deletion in the Senate bill above mentioned, stated that "Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." It may be added that the day after the present action was instituted defendants removed the proceedings to the United States District Court for the Eastern District of Pennsylvania but that court promptly remanded the proceedings to the State court upon the ground that the Federal court had no jurisdiction. Defendants, now seeking further grounds for ousting the jurisdiction of the State court, claim that the case involves a matter of unfair labor practices and also a jurisdictional dispute between rival labor unions, but the present record furnishes no support whatever for either of those contentions.

This brings us to the principal question in the case, namely, whether the controversy between the parties as to the number of men to be employed in connection with the operation of the monorail system is a matter referable to arbitration under Paragraph 28 of the collective bargaining agreement. Both parties admit that under Paragraph 11(d) the number of men to be employed in view of the adoption of the new technological advancement in machinery or method was a subject for negotiation by the committee provided for in the agreement, and such negotiations were in fact entered upon, but, notwithstanding protracted discussions, no agreement could be reached. Of course no governmental authority, whether executive or judicial, has the power to compel negotiators to come to an agreement. Was the problem then to remain unsolvable? Obviously not, for in such situations recourse must ultimately be had to some tribunal having the power to decide the issue, either a court or a body selected by the parties themselves. In the present case the collective bargaining agreement established such a tribunal, for Paragraph 28 provided that all

disputes and grievances *of any kind or nature whatsoever* arising under the agreement should be referred to a Grievance Committee, and, if that body should prove unable to resolve the issue submitted, they should immediately refer the matter to an Impartial Arbitrator therein named. Nothing could be clearer, therefore, than that, negotiations having failed under Paragraph 11(d), the dispute had to be referred to the arbitration machinery set up in Paragraph 28. Defendants point to cases such as *Henry v. Lehigh Valley Coal Co.*, 215 Pa. 448, 64 A. 635, and *B. Fernandez and Hnos., S. en C. v. Rickert Rice Mills, Inc.*, 119 F. 2d 809, holding in effect that where there are two clauses in an agreement, one providing for a special tribunal to settle a special subject or dispute, and the other a general clause providing that any differences between the parties should be referred to arbitration, the latter clause cannot be held to cover the special subject provided for in the former clause for which a different and special tribunal was provided. What defendants overlook, however, is that the tribunals there set up were each to be independent and final, whereas here the arbitration procedure was to come into operation only after the deliberations of the negotiating committee proved ineffective and failed to settle the controversy. Moreover, we are of opinion that the provision in the agreement requiring arbitration under the circumstances here present is so clear that the question as to whether the dispute between the parties is subject to such arbitration does not itself constitute an arbitrable issue. The construction of a contract to determine what questions the parties have agreed therein to submit to arbitration is one, not for the arbitrators themselves, but for the court to decide, and the court will not readily infer that it was intended to empower the arbitrators to determine the extent of their own jurisdiction: *International Association of Machinists v. Cutler-Hammer Inc.*, 67 N. Y. S. 317 (affirmed 297 N. Y. 519, 74 N. E. 2d 464); *B. Fernandez & Hnos. S. en C. v. Rickert Rice Mills, Inc.*, 119 F. 2d 809, 814, 815.

Defendants complain that the court refused to admit evidence designed to show that plaintiffs had violated the agreement on former occasions, but such evidence would clearly have been irrelevant in view of the fact that the agreement admittedly had continued in full force and effect down to the time of the occurrences giving rise to the present litigation. Defendants contend that relief should not have been granted to plaintiffs because only one of them, Dugan & McNamara, Inc., was the employer of the longshoremen, but Philadelphia Marine Trade Association was a party to the collective bargaining agreement and is asserting its rights thereunder, and, while the National Sugar Refining Company was neither such a party nor an employer, it suffered great damage by reason of the work stoppage and was at least a party in interest.

Finally, defendants question the power of the court to enjoin the Union from refusing to supply longshoremen to Dugan & McNamara, Inc. for stevedoring services at the sugar refining company's pier. Since the whole purpose of the collective bargaining agreement was to prevent a work stoppage a refusal by the Union to furnish its members for such services, thereby promoting such a stoppage, was certainly a violation of an obligation inferable from the whole tenor of the agreement.

For the reasons stated we were of opinion that the orders of the court below should be affirmed and accordingly we entered our order so holding.

Mr. Justice Musmanno files a dissenting opinion.

DISSENTING OPINION

MUSMANNO, *J.*

Was the Court of Common Pleas of Philadelphia County empowered to issue an injunction against the defendants? I do not believe so. The subject matter of this litigation is interstate commerce and foreign commerce,

which are exclusively matters for Federal jurisdiction. The pertinent tribunal here is the National Labor Relations Board. This, in a measure, was even recognized by plaintiffs. The Philadelphia Marine Trade Association, writing to the Chairman of the I. L. A. Committee on March 7, 1955, said:

> "In the absence of an agreement between the International Longshoremen's Association and the other union to arbitrate this dispute, the question of jurisdiction can be resolved only by the National Labor Relations Board."

The defendants have already charged the plaintiffs before the National Labor Relations Board with unfair labor practices in that the plaintiffs refused to bargain in good faith with representatives of the employees in accordance with Section 11(d) of the Articles of Agreement. With such a charge pending, the State courts are ousted of jurisdiction. Mr. Chief Justice Stern, writing in the case of Garner v. Teamsters, C. & H. Loc. Union, 373 Pa. 19, 28, said:

> "It will thus be seen that the Labor Management Relations Act provided a complete remedy whenever there was a charge presented to it of an unfair labor practice,—immediate injunctive relief on petition of the Board, a final hearing by the Board, a review of such order in the Federal courts. In our opinion such provisions for a comprehensive remedy *precluded any State action by way of a different or additional remedy* for the correction of the identical grievance." *

In that case the Court of Common Pleas of Dauphin County had issued an injunction which prohibited the Teamsters Union from picketing the plaintiffs' place of business. This Court, reversing the lower Court, said through the Chief Justice:

---

* Italics throughout, mine.

"It is our opinion, therefore, since the plaintiff employers in the present case were engaged in interstate commerce, and the charge made by them was that the defendant Union was engaged in an activity which was unlawful under the law of the State but which also constituted an unfair labor practice under the provisions of the Labor Management Relations Act, and since that act provides an adequate and complete administrative remedy to prevent the continuance of such activity if the charge be substantiated, *the Court of Common Pleas of Dauphin County had no jurisdiction to issue an injunction in this case against the defendant.* Plaintiffs' remedy must be sought by them in proceedings before the National Labor Relations Board, where an injunctive remedy, as previously pointed out, is available." (p. 30)

The decision of our Court was affirmed by the Supreme Court of the United States which said, through Mr. Justice Jackson: "For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits." (Garner v. Teamsters Union, 346 U. S. 485, 499.)

The Supreme Court of the United States further approved the Garner case in its decision in the Weber v. Anheuser-Busch, Inc. case (handed down on March 29, 1955, 23 LW 4150) and specifically declared that: "A State may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the federal statutes." In reviewing its decisions on the subject of Federal-State labor relations, the Court, speaking through Mr. Justice Frankfurter, said:

"1. The Court has ruled that *a State may not prohibit the exercise of rights which the Federal Acts protect.* Thus, in Hill v. Florida, 325 U. S. the State en-

joined a labor union from functioning until it had complied with certain statutory requirements. The injunction was invalidated on the ground that the Wagner Act included a 'Federally established right to collective bargaining' with which the injunction conflicted. *International Union v. O'Brien*, 339 U. S. 454, involved the strike-vote provisions of a state act which prohibited the calling of a strike until a specific statutory procedure had been followed. The state act was held to conflict not only with the procedure and other requirements of the Taft-Hartley strike provisions but also with the protection afforded by Sec. 7 of that Act. [footnote] In *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383, the state court issued an injunction under a statute which made it a misdemeanor to interrupt by strike any essential public utility services. It was held that the state statute was invalid in that *it denied a right which Congress had guaranteed under Sec. 7 of the Taft-Hartley Act*—the right to strike peacefully to enforce union demands for wages, hours and working conditions."

In the Anheuser-Busch case the respondent had filed a charge of unfair labor practice with the National Labor Relations Board and had obtained an injunction in the State Court. Although the Board ruled that no labor practice was involved, the Supreme Court held that the Board, and not the State court, was empowered to pass upon the issue, declaring:

". . . even if it were clear that no unfair labor practices were involved, it would not necessarily follow that the State was free to issue its injunction. If this conduct does not fall within the prohibitions of Sec. 8 of the Taft-Hartley Act, it may fall within the protection of Sec. 7, as concerted activity for the purpose of mutual aid or protection.

"Respondent itself alleged that the union conduct it was seeking to stop came within the prohibitions of the

federal Act, and yet it disregarded the Board and obtained relief from a state court. It is perfectly clear that had respondent gone first to a federal court instead of the state court, the federal court would have declined jurisdiction, at least as to the unfair labor practices, on the ground that *exclusive primary jurisdiction was in the Board.* As pointed out in the Garner case, 346 U. S. at 491, the same considerations apply to the state courts."

It appears to me that the Majority Opinion has failed to give due weight to the decisions and the reasoning therein by the Federal courts on the subject before us. For instance, the celebrated Judge Learned Hand, in the case of International Brotherhood v. National Labor Rel. Bd., 181 F. 2d 34, 36, said in 1950 that: "It is now abundantly established that in the Labor Relations Acts Congress meant to *exercise to the fullest extent its power over interstate commerce.*"

The Majority's interpretation of Section 301 of the Labor Management Relations Act, as I view it, does not accord with the Congressional intention behind that legislation. In the case of Fay v. American Cystoscope Makers, Ind., et al., U. S. Dist. Ct. S. D., N. Y., 98 F. Supp. 278, 281, the plaintiff, as president of a labor union, brought suit in a New York state court alleging that the defendant employer, and others, had breached a collective bargaining contract. The defendant employer removed the action to the Federal District court, and the plaintiff sought to have it remanded. In rejecting the plaintiff's motion, the Court, interpreting Section 301 of the Labor Management Relations Act, declared:

"The suggestion that plaintiff should be permitted to compel defendant to litigate a federal claim in a state court when Congress has explicitly made available a federal forum is indefensible."

The Majority is not inclined to assign to Section 301 of the LMRA the vital role it should play in this case. The Majority would seem to regard it only as an alternative remedy or as merely a matter of procedural choice. In reality, however, it creates a very substantive right of which those engaged in interstate commerce cannot be deprived without denial of due process. In Schatte v. International Alliance, 182 F. 2d 158, 164, the United States Circuit Court of Appeals, Ninth Circuit, said:

> "Section 301 was not enacted merely to provide a new forum for the enforcement of contracts theretofore enforceable only in the state courts . . . The wording of the section and its place in the Taft-Hartley Act demonstrates that the section was designed *to protect interstate and foreign commerce by creating a new substantive liability, actionable in the federal courts, for the breach of a collective bargaining contract in an industry affecting interstate or foreign commerce.*"

In the case of Shirley-Herman Co. v. Internatl. Hod Carriers, Etc., 182 F. 2nd 806, where a claim for damages had been filed because of an asserted violation of a collective bargaining agreement, the defendant union asserted that the New York law requires the plaintiff to show bad faith and that an action could be maintained only if all the members of the union were jointly or severally liable. The Court held this argument irrelevant:

> "This contention is meaningful only on the view that Sec. 301 of the Labor Management Relations Act, 29 U. S. C. A. Sec. 185, merely conferred jurisdiction upon the federal courts to entertain the action, and that the substantive principles of law to be applied must be those of New York. But Sec. 301 goes further than defendant conceives; it created a remedy where none existed before and provided a forum in which to enforce it."

In its Opinion in this case the Majority relates what was omitted from the Labor Management Relations Act, but it is more important to consider what was retained. In the Shirley-Herman case the Court noted that:

> ". . . The report of the Senate Committee on Labor and Public Welfare, which considered this bill, noted that 'to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, *collective agreements affecting interstate commerce should* be enforceable in the Federal courts.'"

But the lower Court here ignored not only the letter of the Labor Management Relations Act, but also its spirit which aims at promoting, as stated in the Shirley-Herman case, industrial peace through the faithful performance of collective bargaining agreements affecting interstate commerce. An injunction is a violent measure that should only be utilized to prevent or repel a greater violence. It is for that reason that the Norris-LaGuardia Act and the Labor Anti-Injunction Acts have come close to completely outlawing injunctions in all labor disputes. Of course, Congress did enlarge, in the Labor-Management Relations Act, the scope of injunctive action where national security is involved, but it in no way lifted the bars against injunctions where a collective bargaining agreement was the subject of litigation. Since Federal legislation thus prohibits the Federal courts from issuing injunctions against employees in interstate commerce, it is not conceivable that State courts would have over interstate employees an injunctive jurisdiction which the United States courts do not possess.

The injunction in this case not only invaded the field of interstate commerce which is strictly Federal jurisdiction, but it went beyond even the provisions of the contract it was supposedly enforcing. Thus, it enjoined the defendants from refusing to supply men to the employers but the agreement is barren of any requirement that the Union

supply men. Also, Sec. 206d of the Anti-Injunction Act excepts from its provisions "breach or violation of a valid subsisting labor agreement between an *employer* and . . . the employees," but the enjoining Court made the Philadelphia Marine Trade Association, which is not an employer, a beneficiary of the injunction. It also included, as a beneficiary, the National Sugar Refining Company which is not a party to the agreement at all.

The Majority cites in support of its position the cases of Alcoa Steamship Co., Inc., v. McMahon, 81 F. Supp. 541, Associated Telephone Co., Ltd. v. Communication Workers of America, C. I. O., 114 F. Supp. 334, and Castle & Cooke Terminals, Ltd., v. Local 137 of International Longshoremen's Warehousemen's Union, 110 F. Supp. 247. Apparently the glasses through which I read reveal a text different from that found by the Majority for I do not see in any of these cases authority for the statement: "That State courts retain the jurisdiction they have always had to enforce contracts notwithstanding Section 301 of the Labor-Management Relations has been held in several Federal cases," enumerating the ones just indicated. The *Alcoa* case decided that the plaintiff there, under the circumstances of that case, was not entitled to injunctive relief in the United States District Court. In the *Associated Telephone Co.* case Federal jurisdiction was refused because, inter alia, the plaintiff "had not alleged it was engaged in a business affecting interstate commerce." The *Castle & Cooke* case held that Congress "did not intend to change or remove the existing limitations on jurisdiction imposed by the Norris-LaGuardia Act to permit District Courts to hear injunction cases against labor organizations, even though they should arise out of violations of labor relations contracts." Holding that the Federal Court may not issue an injunction because of certain limitations is far from saying that the State courts have the power to grant injunctions where interstate commerce is involved. The question as to whether, where unfair labor practice is charged in

interstate employment, as it is in the case at bar, the State is not ousted of jurisdiction because of the intercepting jurisdiction of the National Labor Relations Board, was not considered in any of the three cases cited by the Majority.

Offer to Prove Violation of Agreement.

At the trial in the Court below the defendants attempted to show that the plaintiffs had themselves violated the Agreement and, therefore, under the provisions of Pennsylvania's Labor Anti-Injunction Act of 1939 (43 PS Sec. 206d(a), they were barred from obtaining an injunction. The record reveals the following:

"MR. FREEDMAN: I offer to prove that the Philadelphia Marine Trade Association violated the agreement in locking out Local 1291 of the ILA on several occasions during the period this contract has been in existence.

THE COURT: But they have been working there ever since, haven't they?

MR. FREEDMAN: That is my offer of proof, sir.

THE COURT: Up to the present inquiry they have been working. They have not been locked out now. They want them to go to work and they don't do it.

MR. FREEDMAN: I am offering to prove that on several occasions during this past year——

MR. RHOADS: I object.

THE COURT: The objection is sustained.

MR. FREEDMAN: Exception.

THE COURT: I give you an exception, yes."

It will be noted here that when the attorney for the defendants sought to prove that the plaintiffs had violated the Agreement the Court interposed with a factual observation which was not warranted because, firstly, the hearing

had not terminated and, secondly, the observation was not germane to counsel's offer. Mr. Freedman's offer came strictly within Section 206 (d) of the Anti-Injunction Act which, in stating situations where injunctions may be entertained, specifically excepts:

> "Provided, however, That the complaining person has not, during the term of the said agreement, committed an act as defined in both of the aforesaid acts as an unfair labor practice *or violated any of the terms of said agreement.*"

The Majority treats this serious matter almost as lightly as did the Court below. The Majority says:

> "Defendants complain that the court refused to admit evidence designed to show that plaintiffs had violated the agreement on former occasions, but such evidence would clearly have been irrelevant in view of the fact that the agreement admittedly had continued in full force and effect down to the time of the occurrences giving rise to the present litigation."

The fact that the Agreement was in full force and effect had no bearing on the question whether the plaintiffs had violated its provisions. The Act specifically states that the plaintiffs are not entitled to an injunction if they themselves violate the agreement. Did the plaintiffs violate the agreement, or did they not? That was a question which the Chancellor was required to decide under the specific wording of the statute. If the plaintiffs could not show clean hands, they were not entitled to an injunction. The defendants claimed unclean hands. The lower Court asserted and this Court affirmed irrelevancy. I believe the offer was most relevant, and, in view of the defendants' charges, it was imperative that the plaintiffs display their hands for inspection.

Negotiation and Arbitration

I cannot agree with the Majority's interpretation of the Agreement in litigation. Paragraph 11 (d) of that Agreement provides, inter alia:

> "In the event that technological advancements in machinery or methods in the future are introduced by the employers, the number of men thenceforth to be employed for handling the particular commodities shall be the subject of negotiation between the sub-committee herein created."

This language of this provision is clear, unequivocal and conclusive. It cannot fall within Section 28 which states, inter alia:

> "The Impartial Arbitrator shall have unlimited authority in resolving any issues submitted to him, and shall likewise have unlimited authority to establish his own rules of procedure provided that *he shall have no authority to change any of the terms or conditions of this agreement.*" *

For the Arbitrator to specify the number of men that are to be employed when technological advancements are involved is to run directly counter to Paragraph 11(d) which categorically states that the number of men to be employed for handling particular commodities is to be determined by the subcommittee through negotiation.

Negotiation and arbitration are obviously two different things and, as wishful as the plaintiffs might be, in desiring to see an arbitrator cleave with arbitrary ax through the whole bone of contention, they are nevertheless bound by the contract which they signed. The displacement of men by the introduction of new machinery is a serious problem which engages the furrowing thought of the wisest men of the era in the worlds of business, management, labor,

* All Italics, mine.

economics and sociology. Humanity welcomes every invention which dries up the sweat of the working man and offers him a more leisurely hour in the sunshine of physical comfort and release from back-breaking toil. However, not every new rearrangement of electrons, pistons, valves, wheels and gears of itself necessarily advances mankind on the march to prosperity and happiness for all. What may be gained in one field of worthy desire may be lost in another.

Both management and labor recognize this sociological-scientific phenomenon and, accordingly, in many contracts, as is true in this case, it is agreed that when the technological giant appears, all persons concerned are to deliberate on whether his metallic cloak covers the heart of a Samaritan or a Frankenstein. Since management and labor are both seeking the same thing, namely, a profitable return on monetary and muscular investment, it is happily certain that with a genuinely sincere spirit of cooperation hovering over the table of negotiation, a mutually satisfactory accord can and must be achieved. This is the intention embodied in Sec. 11(d) of the contract. Simple and unadorned as are the words in that section, they nonetheless breathe the spirit of the Golden Rule which can do more for justice than all the statutes and decrees promulgated since the days of Justinian. Neither party to the Agreement believed that so complicated, delicate and momentous a problem as unemployment through technology could be settled by a solitary arbitrator's intervention. Both apparently believed, and praiseworthily so, that a just and fair solution of the dilemma could be achieved through a patient and painstaking untying of the Gordian knot rather than a violent slashing through it, leaving numerous unravelling ends in the form of strikes, lockouts, business stagnation, melancholy and ruin.

A question similar to the one at bar arose in 1906 in the case of Henry v. Lehigh Valley Coal Co., 215 Pa. 449, 451. The contract there had to do with a mining operation

and provided for arbitration in the event of differences between the parties. It also contained a clause which said that if a question arose as to the payment by the lessee of certain unmined coal, three mining engineers were to determine the amount of the coal on the property "by actual examination and testing of all the veins." In interpreting the contract, this Court declared that in spite of the general arbitration provision the special mining-engineer-examination clause provided for "a special tribunal to settle a special subject of dispute":

> "Notwithstanding, therefore, the generality of the language of clause 12 that any differences arising between the parties in reference to any matter relating to the agreement should be referred to three disinterested persons, *it cannot be held to include a special subject of difference for which a different, special and peculiarly appropriate tribunal had been already provided.*"

In a similar manner in the case at bar the parties agreed upon a special tribunal, a six-member committee, to negotiate the matter of all problems attendant upon technological improvements, excluding the arbitrator from this forum of dispute completely.

To allow the arbitrator here to determine the issue involved is to authorize him to alter the terms of the agreement; this, in the face of the specific prohibition in Article 28, to wit, "he shall have no authority to change any of the terms or conditions of this agreement."

It is by no means established procedure that the arbitrator must and will take over all issues arising in the interpretation of the technological provision in the contract. It was testified at the trial that in 1954 one of the plaintiffs, the Philadelphia Marine Trade Association, sought to utilize the arbitration services of Father Comey when the controversy involved the installation of what was known as a "slushing machine," an apparatus designed to empty ore from the hold of ships. Father Comey decided

that the issue was not one for arbitration but one for negotiation and the matter was actually settled by *negotiation.*

The Chancellor's Attitude

It is commonplace to say that before a judge takes up the hearing of a cause he should, to the extent that it is humanly possible, put aside all preconceived notions on the merits of the controversy. The record here suggests that the Chancellor, instead of removing any coat of fixed impressions, donned several more as the trial progressed. His task was to ascertain whether the Agreement really required the defendants to arbitrate the differences between them and the plaintiffs. The Chancellor, however, assumed from the beginning that arbitration was imperative. Thus:

> "THE COURT: If the people involved were negotiating and they selected their arbitrator, Father Comey, *as the contract requires,* the case would not be here.
>
> MR. FREEDMAN: I object to your Honor's statement 'as the contract requires.' Your Honor has not even examined the contract.
>
> THE COURT: Well, the contract has just been read to me that where there is a dispute, they have to present it to some grievance committee and when they cannot agree, *they have to submit the matter in dispute to Father Comey.* Isn't that the situation?"

Also:

> "THE COURT: Go ahead. These people should be down there working and earning a living.
>
> MR. FREEDMAN: And I take exception to your Honor's remarks and I again ask that you disqualify yourself from hearing this case because that is further evidence that you have already prejudged the case.
>
> THE COURT: Not at all. *You have an agreement there that Father Comey is your arbitrator and you ignore it.*

MR. FREEDMAN: I again object to that and ask that you disqualify yourself, again because it indicates that you are prejudging the case.

THE COURT: Not at all."

The Chancellor's treatment of defendants' counsel was as unfortunate as it was uncalled-for. For instance, he charged the defendants' lawyer with misleading the defendants. This is a serious imputation and cannot be supported by the record. There is nothing in the testimony to even remotely suggest that Mr. Freedman was doing other than properly protecting the interests of those he was ably representing. I see no justification for the Court's animadversions reflected in the following:

"THE COURT: *I think these people are being very badly misled.*

MR. FREEDMAN: And I again ask your Honor to disqualify yourself.

THE COURT: No, no.

MR. FREEDMAN: And I object to your Honor's statement.

THE COURT: You can object to it all you want. That is as plain as the nose on anybody's face.

MR. FREEDMAN: Your Honor knows, and you asked me the question before——

THE COURT: *You would serve your clients better if you would tell them to abide by their agreement and go to Father Comey*——

MR. FREEDMAN: Your Honor knows——

THE COURT: Let me finish. *Go to Father Comey and submit their argument to him*—and he may decide in their favor—instead of making a court case out of it.

MR. FREEDMAN: I object to your Honor telling me what to do. I have a right to use my own judgment and I ask your Honor to limit your consideration to this case.

THE COURT: I am not telling you what to do.

MR. FREEDMAN: You just did.

THE COURT: I am telling you that these litigants would be better off if they would abide by their agreement."

With equal disregard for the respect due all members of the Bar, the Chancellor charged counsel with trying to "find ways and means and loopholes" to avoid an obligation:

"THE COURT: Look here, you have better sense than that. What is the purpose of putting in the agreement the provision about submitting all matters in dispute to Father Comey? The very purpose is to try to keep disputes out of the courts.

MR. FREEDMAN: Well, your Honor knows——

THE COURT: Wait a minute. Let me finish. It seems to me that you are trying to find ways and means and loopholes to get out of it.

MR. FREEDMAN: I object to your Honor's statement——

THE COURT: You can object to it, but that is my opinion.

MR. FREEDMAN: It again indicates your Honor's frame of mind.

THE COURT: Not at all. I remember the last litigation and that is exactly what you are trying to do."

Although it is difficult to believe that the Chancellor would deliberately close his ears to legitimate argument in a case, yet the record here shows that the Chancellor declared he would refuse to listen:

"By MR. FREEDMAN:

Q. Did not the Philadelphia Marine Trade Association from time to time during the past year refuse to give employment to the longshoremen members of Local 1291, this union, and all other members of the International Longshoremen's Association?

MR. RHOADS: I object to that. It is the same question.

THE COURT: The objection is sustained. *There was a right to go to Father Comey and get redress, if necessary.*

MR. FREEDMAN: I take exception to your Honor's remarks.

THE COURT: Well, your question certainly is not pertinent here.

MR. FREEDMAN: If your Honor will listen to me, perhaps you will change your mind.

THE COURT: I will not listen. You put your questions to him."

It appears to me, as the above illustrations would indicate, that the defendants failed to receive the impartial hearing to which they were entitled under our Constitution, the laws of the land and all traditions of fairness and undeviating impartiality which govern proceedings in our courts. Every lawyer has the right to be treated with courtesy, listened to with attention and replied to with deliberation. As I read the record, the Trial Judge here failed to observe these tenants and, for that reason, added to what I have further observed on the various questions involved, I would reverse.

APPENDIX B TO PETITION.

ORDER.

AND Now, to wit, April 27, 1955, a majority of the Court being of opinion that the controversy between the parties must be settled by the arbitration provisions in Sections 28 and 29 of the Agreement between the Philadelphia Marine Trade Association and the International Longshoremen's Association for the Port of Philadelphia and Vicinity entered into the 12th day of March, 1954, the orders of the court below of March 23rd and March 25th, 1955, are affirmed; opinions to be filed later. Costs to abide the event.

PER CURIAM

Office - Supreme Court, U.
FILED
SEP 1 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1955.

No. 289.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL UNION NO. 1291, JAMES T. MOOCK, Atlantic Coast District Vice-President of the International Longshoremen's Association, CLIFFORD CARTER, International Organizer for the International Longshoremen's Association, RICHARD ASKEW, President of Local Union No. 1291, and ALEXANDER TALMADGE, PAUL JOHNSON, JR., JOHN J. SMITH, JR. and MARTIN WELSH, Delegates of Local No. 1291, and Approximately One Hundred and Sixty Longshoremen Who Are Employed by Dugan & McNamara, Inc., Contracting Stevedores,

Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION; THE NATIONAL SUGAR REFINING COMPANY and DUGAN & McNAMARA, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OWEN B. RHOADS,
ROBERT M. LANDIS,
RAYMOND W. MIDGETT, JR.,
BARNES, DECHERT, PRICE, MYERS & RHOADS,
1600 Three Penn Center Plaza,
Philadelphia 2, Pa.,
Attorneys for Respondent, The National Sugar Refining Company.

ROBERT G. KELLY,
FRANCIS A. SCANLAN,
KELLY, DEASEY & SCANLAN,
1015 Packard Building,
Philadelphia 2, Pa.,
Attorneys for Respondent, Philadelphia Marine Trade Association.

THOMAS F. MOUNT,
RAWLE & HENDERSON,
1910 Packard Building,
Philadelphia 2, Pa.,
Attorneys for Respondent, Dugan & McNamara, Inc.

International, 236 Chestnut St., Phila. 6, Pa.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1955.

No. 289.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL UNION NO. 1291, JAMES T. MOOCK, ATLANTIC COAST DISTRICT VICE-PRESIDENT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, CLIFFORD CARTER, INTERNATIONAL ORGANIZER FOR THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, RICHARD ASKEW, PRESIDENT OF LOCAL UNION NO. 1291, AND ALEXANDER TALMADGE, PAUL JOHNSON, JR., JOHN J. SMITH, JR. AND MARTIN WELSH, DELEGATES OF LOCAL NO. 1291, AND APPROXIMATELY ONE HUNDRED AND SIXTY LONGSHOREMEN WHO ARE EMPLOYED BY DUGAN & MCNAMARA, INC., CONTRACTING STEVEDORES,

Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION; THE NATIONAL SUGAR REFINING COMPANY AND DUGAN & MCNAMARA, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JURISDICTION.

A preliminary injunction was granted ex parte by Court of Common Pleas No. 1 of Philadelphia County, Pennsylvania, on March 23, 1955 [R. 33a]. After hearing on March 25, 1955, that preliminary injunction was continued until final hearing [R. 175a, 121a, 122a]. On April 27, 1955, the Supreme Court of Pennsylvania affirmed those orders of the court below [Appendix B, Petition, p. 26a].

This Court is without jurisdiction to review this case upon writ of certiorari under 28 U. S. C. § 1257(3) (1948) since the order affirming the granting and continuing of the preliminary injunction is not a "final judgment or decree" within the meaning of that statute. *Montgomery Building & Construction Trades Council v. Ledbetter Erection Co., Inc.*, 344 U. S. 178 (1952).

In the *Ledbetter* case, respondent obtained a temporary injunction prohibiting certain peaceful picketing carried on by petitioners, labor organizations. Petitioners' motion to dissolve the injunction was denied. An appeal to the state supreme court resulted in an affirmance of the temporary injunction. This Court dismissed the writ of certiorari as improvidently granted when it found that there was no final judgment or decree within the meaning of 28 U. S. C. § 1257. It said [344 U. S. 178 *supra*, at 180]:

> "From the earliest days, this Court has refused to accept jurisdiction of interlocutory decrees, such as is involved in this case. In *Gibbons v. Ogden*, 6 Wheat. 448, the first case presenting this issue to this Court, an injunction had been granted by a Chancery Court of the State of New York. The defendant answered and moved to dissolve the injunction. The court denied the motion to dissolve, and the defendant appealed to the Court for the Trial of Impeachments and Correction of Errors which affirmed. The appeal to this Court was dismissed because there was no final decree in the court of last resort for this Court to review.
>
> "The provision of § 1257 that only 'Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court . . .' has been carried in almost identical language since the Judiciary Act of 1789, 1 Stat. 85, § 25.
>
> " 'This requirement is not one of those technicalities to be easily scorned. It is an important

factor in the smooth working of our federal system.' *Radio Station WOW v. Johnson*, 326 U. S. 120, 124.

"The distinction between a preliminary or temporary injunction and a final or permanent injunction was elementary in the law of equity. The classical concept was at once recognized and applied in *Gibbons v. Ogden, supra.* There is no room here for interpretation. The rule remains unchanged.

"True, as long as a temporary injunction is in force it may be as effective as a permanent injunction, and for that reason appeals from interlocutory judgments have been authorized by state legislatures and Congress. But such authorization does not give interlocutory judgments the aspect of finality here, even though we may have inadvertently granted certiorari. *Baldwin Co. v. Howard Co.*, 256 U. S. 35, 40."[1]

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1. To *Gibbons v. Ogden*, Mr. Justice Minton could have added an imposing list of authorities which hold that the grant or denial of a temporary or preliminary injunction is not a "final judgment or decree" subject to review by this Court. In *A. F. of L. v. Swing*, 314 U. S. 321 324 (1941), this Court noted that on a prior occasion:

> ". . . Inasmuch as the[state] supreme court affirmed the issuance merely of a preliminary injunction, we denied certiorari for want of a final judgment. 309 U. S. 659."

To the same effect are: *Verden v. Coleman*, 59 U. S. (18 How.) 86 (1855); *Reddall v. Bryan*, 65 U. S. (24 How.) 420 (1860); *Moses v. The Mayor*, 82 U. S. (15 Wall.) 387 (1872); *Augusta Power Co. v. Savannah R. Electric Co.*, 284 U. S. 574 (1931), dismissing appeal from 163 S. C. 541, 161 S. E. 767 (1930); *Twin City Power Co. v. Savannah R. Electric Co.*, 284 U. S. 574 (1931), denying certiorari and dismissing appeal from 163 S. C. 438, 161 S. E. 750 (1930); *Gant v. Oklahoma City*, 284 U. S. 594 (1932), dismissing appeal from 150 Okla. 86, 6 P. 2d 1065 (1931); *Atlanta Laundries Inc. v. City of Newman*, 286 U. S. 526 (1932), dismissing appeal from 174 Ga. 99, 162 S. E. 497 (1932); *Musser v. Sheppard*, 299 U. S. 513 (1936), dismissing appeal from 127 Tex. 193, 92 S. W. 2d 219 (1936); *Williams v. Quill*, 303 U. S. 621 (1938), dismissing appeal from 277 N. Y. 1, 12 N. E. 2d 547 (1938).

This conclusion was reached even though the Court recognized that to await the final hearing would render the question moot [344 U. S. 178 *supra*, at 181]:

> "It is argued that if this is not held to be a final decree or judgment and decided now, it may never be decided, because to await the outcome of the final hearing is to moot the question and to frustrate the picketing. However appealing such argument may be, it does not warrant us in enlarging our jurisdiction. Only Congress may do that. Furthermore, the interlocutory decree could have been readily converted into a final decree, and the appeal could have proceeded without question as to jurisdiction just as effectively and expeditiously as the appeal from the interlocutory injunction was pursued in this case."[2]

The rule recently restated in the *Ledbetter* decision has good reasons to support it. To postpone review in a suit of this type permits more rapid disposition of the matter in the court below, promotes harmonious state-federal relations, and avoids the evils of piecemeal review, including a prejudgment of the cause based upon a factually incomplete record. At the time the preliminary injunction was granted and continued, petitioners had not yet filed their answer, nor respondents their reply. Nothing in the case to date will preclude the offer of any evidence pertinent to the issues at the final hearing. The terms of the final decree resulting from that evidence may well be quite different from the existing preliminary injunction: some of the present questions may be eliminated or new ones added. If petitioners are still dissatisfied, review by the state supreme court and this Court, if necessary, will be available.

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2. Although Mr. Justice Douglas and Mr. Justice Black dissented from the *Ledbetter* opinion they recognized its authority as recently as last term in their dissent in *Amalgamated Clothing Workers of America v. Richman Bros. Co.*, 348 U. S. 511, 526 (1955):

> "There can be no appeal to this Court from the temporary injunction. *Building Union v. Ledbetter Co.*, 344 U. S. 178."

QUESTIONS PRESENTED FOR REVIEW.

1. Whether the jurisdiction of this Court under 28 U. S. C. § 1257(3) permits review by writ of certiorari of an order of a state supreme court affirming the granting of a preliminary injunction although the suit is still pending and the final decree may or may not present a federal question.

2. Whether the passage of § 301 of the Labor-Management Relations Act of 1947 deprives a state court of the power to enjoin a labor union, its officers, and members from violating a collective bargaining agreement by conduct which does not constitute an unfair labor practice.

STATUTE INVOLVED.

In addition to the statutes cited at pages 3-6 of the Petition, this case involves Judicial Code, 1948, § 1257(3), 28 U. S. C. § 1257(3) (1948):

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> " . . .
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

STATEMENT OF THE CASE.

Petitioners are International Longshoremen's Association, Local Union No. 1291 (which is the collective bargaining agent for deep-sea longshoremen at the Port of Philadelphia), certain union officials, and the individual longshoremen who have been employed more or less regularly by respondent Dugan & McNamara, Inc. at the pier of respondent The National Sugar Refining Company [R. 69a-70a].

The respondents are Philadelphia Marine Trade Association (PMTA), The National Sugar Refining Company (National), and Dugan & McNamara, Inc. (Dugan). National operates a refinery in Philadelphia and its premises include a pier where vessels carrying raw sugar are unloaded by Dugan, contracting stevedores employed by National [R. 69a-70a, 99a]. PMTA is the collective bargaining agent for its members who employ deep-sea longshoremen, including Dugan [R. 41a].

On February 14, 1955, PMTA notified the union that National intended to improve the unloading facilities at its pier by installing a monorail system [Plaintiffs' Exhibit 6, R. 145a, 106a]. Under the system then in use, National's sugar (all of which arrives at its pier in bags) was discharged from the sugar ships to the pier where it was loaded into small motor trucks that carried the sugar from the end of the ship's tackle to a point on the pier called the "table". From the table, the sugar, after being weighed, was carried by means of conveyor belts to "the crusher", where the bags were opened, the raw sugar dumped into the crusher and sent on its way into the refinery.

Under this system, 163 longshoremen were employed by Dugan to handle the sugar from the ship to the table. Fifty-five of those men operated the motor trucks. In addition, a number of refinery workers (not members of peti-

tioner-union) handled the sugar from the table to the crusher.

Under the monorail system, the drafts of sugar were to be carried from the end of the ship's tackle to the "table" by means of electrically operated overhead trolleys, which thus eliminated the operation performed by the motor trucks and the necessity for the services of the truck drivers. No change whatever was contemplated in the operation from the table to the crusher, which continued to be performed by members of the refinery workers' union [R. 43a, 64a-65a].

As a result of this improvement, fewer longshoremen would be needed to unload the vessel and a dispute arose between petitioners and respondents over the precise number.[3]

Following the procedure outlined in paragraph 11(d) of the collective bargaining agreement between PMTA and the union,[4] negotiations about the number of men to be em-

3. Petitioners' references (Petition, pp. 8-10, 18) to an alleged jurisdictional dispute between unions as to which should man the conveyor belt from the table to the crusher are misleading. The reliance placed on Plaintiffs' Exhibit 8 [R. 148a, 106a], the letter from PMTA to the union dated March 7, 1955, is unjustified. An examination of that letter clearly shows that the only parts of it relating to this litigation are paragraphs 1, 2, 3 and 4. The first three contain PMTA proposals for the number of men to be employed and the fourth proposes arbitration if the joint committee is unable to reach agreement. Thereafter, paragraph 5 refers to a dispute between petitioners and the refinery workers' union that is a separate matter unrelated to this litigation.

4. On or about March 12, 1954, PMTA and the union entered into a collective bargaining agreement which does not expire until September 30, 1955, and is now in full force and effect [Plaintiffs' Exhibit 1, R. 125a, 106a; R. 40a].

The material portion of paragraph 11(d) provides [R. 133a]:

". . . In the event that technological advancements in machinery or methods in the future are introduced by the employers, the number of men thenceforth to be employed for handling the particular commodities shall be the subject of negotiation between the sub-committee herein created."

The committee referred to consists of three representatives of the union and three representatives of the employers.

ployed were conducted by a joint committee but, after three meetings, the committee reached an impasse [R. 43a-44a]. On March 7, 1955, PMTA had proposed to the union that the dispute be submitted through the regular arbitration procedure provided by paragraph 28 of the collective bargaining agreement [Plaintiffs' Exhibit 8, R. 148a, 106a; R. 44a].[5] The union refused to submit this issue to arbitration because it contended that a dispute arising under paragraph 11(d) was not subject to paragraph 28 [Plaintiffs' Exhibit 9, R. 151a, 106a; R. 47a].

As a result of the union's position, PMTA, on March 15, 1955, when an impasse had been reached, initiated arbitration under paragraph 28 of the "question involving the interpretation of this agreement", i.e., whether paragraph 28 arbitration should follow a deadlock of a negotiating committee acting under paragraph 11(d) [Plaintiffs' Exhibit 10, R. 154a, 106a; R. 49a]. But the union insisted that the meaning of paragraph 11(d) was not subject to arbitration [Plaintiffs' Exhibit 11, R. 157a, 106a; R. 49a; Plaintiffs' Exhibit 12, R. 159a, 106a; Plaintiffs' Exhibit 13, R. 161a, 106a; R. 57a; Defendants' Exhibit 1, R. 163a, 114a].

On March 19, 1955, the final steps in the installation of the monorail were completed. From that date, it was impossible to unload the sugar by any other method [R. 101a-104a].

On March 22, 1955, the S. S. Arizpa arrived at National's pier with a cargo of raw sugar. The longshoremen refused to unload the vessel unless Dugan agreed to employ as many men as it had employed before the improvement was made [R. 73a].

The conduct of the petitioners was causing great damage. The operation of National's refinery was threatened

5. Paragraph 28 provides that "all disputes and grievances of any kind or nature whatsoever arising under the terms or conditions of [the] agreement, and all questions involving the interpretation of [the] agreement", shall be referred to a grievance committee, and, upon its failure to agree, to a named impartial arbitrator [R. 137a-138a].

with, and eventually did come to, a complete standstill with a consequent loss of employment to nine hundred of its employees with whom it had no dispute and the resulting hardship upon their families and the community [R. 99a-101a].

On March 23, 1955, respondents filed their complaint in equity in the Court of Common Pleas No. 1 of Philadelphia County, alleging a breach of a collective bargaining agreement [R. 3a]. That court, because of the imminent threat of irreparable harm shown in the sworn averments in the complaint and affidavits [R. 28a, 31a], issued a preliminary injunction enjoining the petitioners from refusing to participate in the arbitration procedures required by the collective bargaining agreement, and from participating in any work stoppage in violation of their agreement [R. 33a].

On March 24, 1955, petitioners removed the action to the United States District Court for the Eastern District of Pennsylvania. On the same day, a three-judge district court granted the respondents' motion to remand the case to the common pleas court, stating in its order that it was without jurisdiction in the matter [R. 35a, 36a-37a].

On March 25, 1955, a hearing was held [6] and the court entered an order continuing the preliminary injunction "until the final hearing of this action" [R. 175a, 121a, 122a]. At the beginning of that hearing, petitioners' counsel moved to dismiss for lack of jurisdiction but his motion stated no grounds and was refused.[7]

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6. Pennsylvania practice prohibits the continuance of a preliminary injunction obtained ex parte without a prompt hearing. Pennsylvania Rule of Civil Procedure 1531(d).

7. The record shows the following [R. 37a]:

"MR. FREEDMAN: May I make some motions, if your Honor please.

"THE COURT: Yes.

"MR. FREEDMAN: I first move that the matter be dismissed on the ground that there is no jurisdiction by this Court over this subject matter."

On April 4, 1955, after the hearing in the common pleas court and while the appeal to the Supreme Court of Pennsylvania taken March 28, 1955 was pending,[8] the union filed a charge against Dugan with the National Labor Relations Board, Fourth Region [Case No. 4-CA-1220]. The charge alleged that Dugan refused to bargain in good faith and further that the state court proceeding was instituted to deprive the employees of their rights under the Labor-Management Relations Act. On June 20, 1955, after investigation, the Board refused to issue a complaint on the ground that there was insufficient evidence to support the charge. See letter from Regional Director, Fourth Region, NLRB to Mr. Askew dated June 20, 1955. [Appendix to this Brief, p. 21.] Although petitioners had the right to have the action of the Regional Director reviewed, they failed to take the steps necessary to obtain such review and the case has been closed.

On April 27, 1955, after consideration of briefs and argument, the state supreme court entered an order affirming the orders of the court of common pleas dated March 23 and 25, 1955 [Appendix B, Petition, p. 26a]. In its opinion filed June 27, 1955, it found that (1) the dispute over the number of men to be employed was arbitrable under the parties' agreement, (2) the state court had the power to enjoin a breach of a collective bargaining agreement, and (3) "the present record furnishes no support whatever" for petitioners' claim that the case involves a matter of unfair labor practices and a jurisdictional dispute between rival labor unions [Appendix A, Petition, p. 7a].

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8. An immediate appeal from the granting and continuance of the preliminary injunction was authorized by the Act of February 14, 1866, P. L. 28, § 1, Pa. Stat. Ann., tit. 12, § 1101 (1953).

ARGUMENT.

The petition for writ of certiorari should be denied because this Court is without jurisdiction for the reasons given at pages 2-4 of this brief. In any event, the decision of the court below, which was clearly correct, does not merit review because:

First, the absence of any issue in this case which is subject to the jurisdiction of the National Labor Relations Board precludes any conflict with decisons of this Court relating to state power of such an issue; and,

Second, the power of the state court to enjoin a union's breach of a collective bargaining agreement which is not an unfair labor practice has been uniformly recognized by the few courts which have considered the problem.

I. There Is No Conflict Between the Decision of the Court Below and Any Decision of This Court.

Petitioners' contention that the decision of the court below conflicts with decisions of this Court excluding state action in areas subject to the jurisdiction of the National Labor Relations Board must fail since this case presented no issue within the jurisdiction of the Board.

According to petitioners, the litigation arose from a dispute between petitioners and the refinery workers' union about which union would man the conveyor belts from the table to the crusher but this contention is unsupported by the record. Petitioners' only record references on this point are to Plaintiffs' Exhibits 8 [R. 148a, 106a], 9 [R. 151a, 106a], and 11 [R. 157a, 106a]. But examination of those exhibits, particularly Plaintiffs' Exhibit 8, a letter from PMTA to the union dated March 7, 1955, shows that the alleged jurisdictional dispute was completely separate from the dispute in this case [R. 148a-150a]. That the juris-

to in the courts below or before the NLRB and advanced for the first time in the petition for writ of certiorari, is clearly inapplicable and without foundation in the record. It is quite obvious that there was no attempt to modify the contract within the meaning of § 8(d). The contract only required that technological improvements would be introduced and that those improved conditions would be reduced to the contract as may be negotiated. The contract further provided a procedure for determining this issue, that is, negotiations under paragraph 11(b); and, if negotiations failed, by arbitration under paragraph 20. Management never attempted to modify the contract unilaterally. They have done all that was required to resolve the dispute arising under it in accordance with its terms.

In fact, there was no issue in this case subject to the jurisdiction of the NLRB, and the Supreme Court of Pennsylvania, a court competent to interpret points in this area (Hagans v. Pennsylvania Co., 278 Pa. 19, 22 A. 58 aff'd 260 U. S. 682 (1922)), correctly so held.

II. The Pennsylvania Supreme Court Has Not Decided Any Federal Question That Has Not Been Settled by This Court, Nor Has It Decided a State Court Decision Conflicting With Decisions of a Subordinate Reviewing Authority That Is Not in Direct Conflict Therewith.

Petitioners claim that federal legislation completely occupies "the entire field of labor relations as applied to carrier-interstate and foreign commerce" and particularly, since the enactment of § 301 of the Labor Management Relations Act of 1947 "all matters involving the breach of a collective bargaining agreement." (Petition, p. 23.) However, recent decisions of this Court are directly contrary to this view. Only last term this Court said (Warner v. Missouri Board, 346 U. S. 464, 467 (1953)):

> "By the 1947 Hardin Act, Congress did not extend the full sweep of legislative power over labor relations given by the Commerce Clause. The grant terminated a wide variety of outlawed acts as

11 49 Stat. 450 (1947); 29 U. S. C. § 185 (1952).

[illegible]

> *case [Garner] recognized that the Act excluded conflicting state procedure to the same end. 'To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated. The case we took in the Garner case to demonstrate the existing conflict between state and federal administrative remedies in that case was, itself, a recognition that if no conflict had existed, the state procedure would have survived.''*

This Court concluded that there was no conflict between the preventive procedure established by federal law and the compensatory remedy under state law.

The case at bar is the converse of Laburnum. In that case the availability of federal injunctive relief did not preclude a state court action for damages. In this case the availability of a federal action for damages, under Section 301 of the Labor Management Relations Act, does not preclude a state court action for injunctive relief. That relief is available to respondents in the Pennsylvania Courts, but as petitioners admit (Petition, pp. 21-22), is not available in the federal courts because of the prohibitions of the Norris-LaGuardia Act.[14] There is no conflict in remedies,

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14. In fact, H. R. 9126, 80th Cong., 1st Sess. (1947), as it was originally introduced, contained a provision (§ 902(c)) expressly exempting suits for violation of collective bargaining agreements from the Norris-LaGuardia Act (47 Stat. 70) (1932), 29 U. S. C. §§ 101-115 (1946); but it was withdrawn before the Act was passed. See the remarks attached to W. J. Mead Inc. v. International Brotherhood etc., 217 F. 2d 1, 8-10 (1st Cir., 1954); Local 205 etc. v. Crane Electric Co., 120 F. Supp. 669 (D. Mass., 1954); Capital Co. Coach Terminal, Ltd. v. Local 177 etc., 110 F. Supp. 247, 251 (D. Hawaii, 1953); Allen S. S. Co. v. McMahon, 81 F. Supp. 561, 563 (S. D. N. Y. 1948), aff'd per curiam, 175 F. 2d 967 (2d Cir. 1949), cert. denied, 338 U. S. 821 (1949); Associated Tel. Co. v. Communications Workers, 114 F. Supp. 934, 937 (S. D. Cal., 1953); and Sand Lumber Co. v. Lumber & Sawmill Workers Local Union etc., 122 F. Supp. 925, 927-928 (W. D. Ky., 1954).

therefore, because the state relief sought in this case has no parallel from a federal standpoint. Here the state action for injunctive relief complements the federal action for damages to the same extent as the state action for damages complemented the federal action for injunctive relief in Labor Board.

Furthermore, while § 301 authorizes federal courts to entertain actions for breach of a collective bargaining agreement, Congress did not intend thereby to create exclusive federal jurisdiction over such actions. The plain meaning of the statute and legislative history show that Congress intended only to adopt a procedural provision which would provide a federal forum for such actions. Nothing in the legislative history shows any intent to deprive the state courts of the jurisdiction they then exercised.[14] *There is positive evidence that the state court jurisdiction was to be preserved. H. Rep. No. 105, Pt. 2, 80th Cong., 1st Sess. (1947), after noting that the grant of federal jurisdiction under § 301 "merely makes the existing remedy available to more persons" [p. 13], specifically states that [at p. 14]:*

> *". . . The only advantage, if indeed it may be called an advantage, is to give many disputing parties an otherwise unavailable opportunity to choose a Federal forum rather than a State forum. . . ."*

The Westinghouse case demonstrates that there are serious constitutional questions raised by § 301. In the Westinghouse case, as in Westinghouse, those problems may be avoided by limiting the scope of that provision. 348 U. S. 437 supra, at 450. This can be done by a finding either that the com-

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14. All Congress intended to do by § 301 is expressed by Senator Ball [93 Cong. Rec. 5146 (1947)]:

> "Fourth, we give to employees the right to sue a union in interstate commerce, in a Federal court, for violation of contract. It does not go beyond that. . . ."

See also Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U. S. 437, 441-449 (1955).

edy provided by § 301 does not conflict with the injunctive relief for breach of a collective bargaining agreement available in the state court or that Congress did not intend § 301 to exclude state court jurisdiction over an action for a breach of a collective bargaining agreement.

In any event, while there may be conflict in the decisions on whether § 301 created a federal substantive right of action, or on the identity of the law applicable to an action under § 301 [*see Ass'n of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437, 452 n. 26 (1955)], there is no conflict on the question in this case: the few existing authorities on the question uniformly hold that the adoption of § 301 did not destroy the power of a state court to enjoin a union from violating a collective bargaining agreement where such conduct was not in itself an unfair labor practice. *General Electric Co. v. Int'l Union UAW*, 93 Ohio App. 139, 108 N. E. 2d 211 (1952); *General Bldg. Contractors' Ass'n v. Local Union* 542, 370 Pa. 73, 79-82, 87 A. 2d 250, 254-255 (1952); *Associated Tel. Co. v. Communication Workers*, 114 F. Supp. 334, 340-341 (S. D. Cal. 1953); *Castle & Cooke Terminals, Ltd. v. Local 137 etc.*, 110 F. Supp. 247 (D. Hawaii 1953); *Dairymen's Ass'n, Ltd. v. Hawaii Teamsters etc.*, 25 C. C. H. Lab. Cas. par. 68,307, 26 C. C. H. Lab. Cas. par. 68,584 (Cir. Ct. Hawaii 1954).[15]

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15. Cases cited by petitioners are not to the contrary. The quotation from *Schatte v. International Alliance etc.*, 182 F. 2d 158 (9th Cir., 1950), Petition, p. 26-27, that Congress created a new right of action for breach of a collective bargaining agreement is dictum. In *Shirley-Herman Co. v. International Hod Carriers etc.*, 182 F. 2d 906 (2d Cir., 1950), Petition, p. 25, the court of appeals affirmed the jurisdiction of the district court under § 301 and denied the applicability of state law to such an action. Neither of these cases passes upon the power of a state court to enjoin a breach of a collective bargaining agreement. The decision in *Fay v. American Cystoscope Makers, Inc.*, 98 F. Supp. 278 (S. D. N. Y., 1951), Petition, p. 27, was controlled by *Shirley-Herman* and, without independent consideration of the problem, it does deny the power of a state court to entertain an action for breach of a collective bargaining agreement, but it does not appear whether the relief claimed was injunctive in nature.

CONCLUSION.

It is submitted the petition for writ of certiorari should be denied.

Respectfully submitted,

OWEN B. RHOADS,
ROBERT M. LANDIS,
RAYMOND W. MIDGETT, JR.,
BARNES, DECHERT, PRICE, MYERS & RHOADS,
Attorneys for Respondent, The National Sugar Refining Company.

ROBERT G. KELLY,
FRANCIS A. SCANLAN,
KELLY, DRABBY & SCANLAN,
Attorneys for Respondent, Philadelphia Marine Trade Association.

THOMAS F. MOUNT,
RAWLE & HENDERSON,
Attorneys for Respondent, Dugan & McNamara, Inc.